2006

HOUSE
FINANCE

COMMITTEE
MINUTES

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

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

Last Updated: August 29, 2005

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

EX-OFFICIO MEMBERS

CUNNINGHAM, Pete	Petec@ncleg.net	Valerie Rustin	3-5778	541	7
EDDINS, Rick	Ricke@ncleg.net	Susan Phillips	3-5828	1002	26

STAFF

Cindy Avrette, Research	cindya@ncleg.net	3-2578	545	
Erika Churchill, Research	erikac@ncleg.net	3-2578	545	
Judy Collier, Research	judyc@ncleg.net	3-2578	545	
Trina Griffin, Research	trinag@ncleg.net	3-2578	545	
Rodney Bizzell, Fiscal Research	rodneybi@ncleg.net	3-4910	619	

Last Updated: August 29, 2005

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

COMMITTEE ASSISTANT

Jason Cannon	jasonc@ncleg.net	5-1812	1104

HOUSE COMMITTEE ON FINANCE
2005-2006 SESSION
Room/Phone/Addresses

MEMBER	DISTRICT	E-MAIL	PHONE	ROOM	ADDRESS
			(919) area code		
ALEXANDER, Martha, Chair	(D-106) Mecklenburg	Marthaa@ncleg.net	733-5807	2208	Legislative Building Raleigh NC 27601-1096
GIBSON, Pryor, Chair	(D-69) Anson, Union	Pryorg@ncleg.net	715-3007	419A	Legislative Office Building Raleigh, NC 27603-5925
HOWARD, Julia, Chair	(R-79) Davie, Iredell	Juliah@ncleg.net	733-5904	1106	Legislative Building Raleigh NC 27601-1096
LUEBKE, Paul, Chair	(D-30) Durham	Paull@ncleg.net	733-7663	529	Legislative Office Building Raleigh, NC 27603-5925
McCOMAS, Danny, Chair	(R-19) New Hanover	Dannym@ncleg.net	733-5786	506	Legislative Office Building Raleigh, NC 27603-5925
WAINWRIGHT, William, Chair	(D-12) Craven, Lenoir	Williamw@ncleg.net	733-5995	532	Legislative Office Building Raleigh, NC 27603-5925
DAUGHTRIDGE, Bill, Vice-Chair	(R-25) Nash	Billd@ncleg.net	733-5802	304B	Legislative Office Building Raleigh, NC 27603-5925
HILL, Dewey, Vice-Chair	(D-20) Brunswick, Columbus	Deweyh@ncleg.net	733-5830	1309	Legislative Building Raleigh NC 27601-1096
ROSS, Deborah, Vice-Chair	(D-38) Wake	Deborahr@ncleg.net	733-5773	2223	Legislative Building Raleigh NC 27601-1096
WEISS, Jennifer, Vice-Chair	(D-35) Wake	Jenniferw@ncleg.net	733-5781	2221	Legislative Building Raleigh NC 27601-1096
WOMBLE, Larry, Vice-Chair	(D-71) Forsyth	Larryw@ncleg.net	733-5777	534	Legislative Office Building Raleigh, NC 27603-5925
ALLEN, Bernard	(D-33) Wake	Bernarda@ncleg.net	733-5772	1325	Legislative Building Raleigh NC 27601-1096
BLACKWOOD, Curtis	(R-73) Union	Curtisb@ncleg.net	733-2406	1317	Legislative Building Raleigh NC 27601-1096

BLUST, John	(R-62) Guilford	Johnbl@ncleg.net	733-5806	1420	Legislative Building Raleigh NC 27601-1096
BORDSEN, Alice	(D-63) Alamance	Aliceb@ncleg.net	733-5820	530	Legislative Office Building Raleigh, NC 27603-5925
CAPPS, Russell	(R-41) Wake	Russellc@ncleg.net	733-5903	501	Legislative Office Building Raleigh, NC 27603-5925
CARNEY, Becky	(D-102) Mecklenburg	Beckyc@ncleg.net	733-5827	1221	Legislative Building Raleigh NC 27601-1096
DOCKHAM, Jerry	(R-80) Davidson	Jerryd@ncleg.net	715-2526	1424	Legislative Building Raleigh NC 27601-1096
ENGLAND, Bob	(D-112) Cleveland, Rutherford	Bobe@ncleg.net	733-5749	2219	Legislative Building Raleigh NC 27601-1096
FAISON, Bill	(D-50) Caswell, Orange	Billf@ncleg.net	715-3019	537	Legislative Office Building Raleigh, NC 27603-5925
FISHER, Susan	(D-114) Buncombe	Susanf@ncleg.net	715-2013	420	Legislative Office Building Raleigh, NC 27603-5925
FOLWELL, Dale	(R-74) Forsyth	Dalef@ncleg.net	733-5787	508	Legislative Office Building Raleigh, NC 27603-5925
GLAZIER, Rick	(D-45) Cumberland	Rickg@ncleg.net	733-5601	2215	Legislative Building Raleigh NC 27601-1096
GOFORTH, Bruce	(D-115) Buncombe	Bruceg@ncleg.net	733-5746	1220	Legislative Building Raleigh NC 27601-1096
HACKNEY, Joe	(D-54) Chatham, Moore, Orange	Joeh@ncleg.net	733-5752	2207	Legislative Building Raleigh NC 27601-1096
HARRELL, Jim	(D-90) Allegheny, Surry	Jimha@ncleg.net	715-1883	403	Legislative Office Building Raleigh, NC 27603-5925
HOLLIMAN, Hugh	(D-81) Davidson	Hughh@ncleg.net	715-0873	1213	Legislative Building Raleigh NC 27601-1096
INSKO, Verla	(D-56) Orange	Verlai@ncleg.net	733-7208	2121	Legislative Building Raleigh NC 27601-1096
JONES, Earl	(D-60) Guilford	Earlj@ncleg.net	733-5825	536	Legislative Office Building Raleigh, NC 27603-5925

LEWIS, David	(R-53) Harnett	Davidl@ncleg.net	715-3015	509	Legislative Office Building Raleigh, NC 27603-5925
LUCAS, Marvin	(D-42) Cumberland	Marvinl@ncleg.net	733-5775	1323	Legislative Building Raleigh NC 27601-1096
McGEE, William	(R-75) Forsyth	Williamm@ncleg.net	733-5747	531	Legislative Office Building Raleigh, NC 27603-5925
RAYFIELD, John	(R-108) Gaston	Johnr@ncleg.net	733-5868	510	Legislative Office Building Raleigh, NC 27603-5925
UNDERHILL, Alice	(D-3) Craven, Pamlico	aliceu@ncleg.net	733-5853	1206	Legislative Building Raleigh NC 27601-1096
VINSON, Doug	(R-105) Mecklenburg	dougv@ncleg.net	733-5886	1010	Legislative Building Raleigh NC 27601-1096
WALEND, Trudi	(R-113) Henderson, Polk, Transylvania	Trudiw@ncleg.net	715-4466	1015	Legislative Building Raleigh NC 27601-1096
WILEY, Laura	(R-61) Guilford	lauraw@ncleg.net	733-5877	513	Legislative Office Building Raleigh, NC 27603-5925
EX-OFFICIO MEMBERS					
CUNNINGHAM, Pete	(D-107) Mecklenburg	Petec@ncleg.net	733-5778	541	Legislative Office Building Raleigh, NC 27603-5925
EDDINS, Rick	(R-40) Wake	Ricke@ncleg.net	733-5828	1002	Legislative Building Raleigh NC 27601-1096

HOUSE FINANCE COMMITTEE ATTENDANCE

2006 Session

DATES →→→	5/10/06	5/23/06	6/1/06	6/6/06	6/8/06	6/13/06 8:30am	6/13/06 4:00pm	6/20/06	6/21/06	6/22/06	6/27/06	7/5/06	7/10/06	7/11/06	7/13/06
Rep. Alexander, Chair	✓	E	✓	✓	✓						✓	✓	✓	✓	✓
Rep. Gibson, Chair	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Rep. Howard, Chair	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓		
Rep. Luebke, Chair	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓
Rep. McComas, Chair	✓		✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓
Rep. Wainwright, Chair	✓	✓	✓	✓	✓	✓	✓			✓	✓	✓		✓	✓
Rep. Daughtridge, Vice-Chair	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Rep. Hill, Vice-Chair	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Rep. Ross, Vice-Chair	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Rep. Weiss, Vice-Chair	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Rep. Womble, Vice-Chair	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Rep. B. Allen	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓		✓	✓
Rep. Blackwood	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓
Rep. Blust	✓	✓	✓	✓	✓	✓	✓	✓					✓	✓	
Rep. Bordsen	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Rep. Capps	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Rep. Carney	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓
Rep. Dockham	✓	✓	✓	✓	✓	✓	✓	✓		✓				✓	✓
Rep. England		✓		✓	✓	✓	✓	✓		✓	✓				✓
Rep. Faison	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓
Rep. Fisher	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓		✓	
Rep. Folwell	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓
Rep. Glazier	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Rep. Goforth			✓	✓	✓	✓	✓	✓			✓	✓	✓		✓
Rep. Hackney	✓	✓	✓	✓		✓	✓	✓		✓	✓	✓	✓	✓	✓
Rep. Harrell	✓			✓	✓	✓	✓	✓		✓	✓		✓	✓	✓
Rep. Holliman	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓
Rep. Insko	✓	✓			✓		✓				✓	✓	✓	✓	

HOUSE FINANCE COMMITTEE ATTENDANCE

2005 Session

DATES →→→	5/10/05	5/23/05	6/1/05	6/15/05	6/8/05	6/13/05 8:30am	6/13/05 4:00pm	6/20/05	6/21/05	6/28/05	6/29/05	7/6/05	7/11/05	7/13/05	7/18/05
Rep. Jones		✓	✓	✓		✓	✓	✓	✓		✓		✓		
Rep. Lewis	✓		✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Rep. Lucas	✓	✓	✓	✓		✓		✓	✓	✓	✓	✓		✓	
Rep. McGee	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Rep. Rayfield	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	E	✓	✓
Rep. Underhill	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Rep. Vinson	✓	✓	✓		✓	✓		✓		✓	✓			✓	✓
Rep. Walend	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Rep. Wiley	✓	✓	✓	✓	✓	✓		✓		✓	✓	✓	✓	✓	✓
~~Rep. Culpepper, Ex-Officio~~															
Rep. Cunningham, Ex-Officio					✓	✓	✓							✓	✓
Rep. Eddins, Ex-Officio															
Cindy Avrette. Staff	✓	✓	✓	✓		✓	✓	✓		✓	✓	✓	✓	✓	✓
Rodney Bizzell, Staff	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Erika Churchill, Staff															
Gerry Cohen, Staff							✓	✓						✓	
David Crotts, Staff		✓			✓		✓	✓	✓	✓	✓				
Brenna Erford	✓		✓	✓				✓	✓	✓	✓	✓		✓	✓
Trina Griffin, Staff		✓												✓	✓
Mikael Gross, Staff															
Canaan Huie, Staff	✓	✓		✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓
Linda Millsaps, Staff	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓				
Alexei Pavlichev, Staff															
Martha Walston, Staff	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓
Bob Weiss					✓		✓					✓			
Dan Ettefagh							✓	✓	✓	✓	✓		✓	✓	

HOUSE FINANCE COMMITTEE ATTENDANCE

2006 Session

DATES →→→	4/12/06														
Rep. Alexander, Chair	✓														
Rep. Gibson, Chair	✓														
Rep. Howard, Chair															
Rep. Luebke, Chair	✓														
Rep. McComas, Chair															
Rep. Wainwright, Chair	✓														
Rep. Daughtridge, Vice-Chair	✓														
Rep. Hill, Vice-Chair	✓														
Rep. Ross, Vice-Chair	✓														
Rep. Weiss, Vice-Chair	✓														
Rep. Womble, Vice-Chair	✓														
Rep. B. Allen	✓														
Rep. Blackwood	✓														
Rep. Blust															
Rep. Bordsen															
Rep. Capps	✓														
Rep. Carney	✓														
Rep. Dockham															
Rep. England															
Rep. Faison	✓														
Rep. Fisher															
Rep. Folwell	✓														
Rep. Glazier	✓														
Rep. Goforth	✓														
Rep. Hackney	✓														
Rep. Harrell	✓														
Rep. Holliman	✓														
Rep. Insko	✓														

HOUSE FINANCE COMMITTEE ATTENDANCE

2005 Session

DATES →→→	7/18/06														
Rep. Jones	✓														
Rep. Lewis	✓														
Rep. Lucas	✓														
Rep. McGee	✓														
Rep. Rayfield	✓														
Rep. Underhill	✓														
Rep. Vinson															
Rep. Walend	✓														
Rep. Wiley	✓														
Rep. Culpepper, Ex-Officio															
Rep. Cunningham, Ex-Officio	✓														
Rep. Eddins, Ex-Officio															
Cindy Avrette. Staff	✓														
Rodney Bizzell, Staff	✓														
Erika Churchill, Staff															
Gerry Cohen, Staff															
David Crotts, Staff	✓														
Brenna Erford	✓														
Trina Griffin, Staff															
Mikael Gross, Staff															
Canaan Huie, Staff	✓														
Linda Millsaps, Staff															
Alexei Pavlichev, Staff															
Martha Walston, Staff	✓														
Bob Weiss	✓														

Bill	Introducer	Short Title		Date	Latest Action
H 15	Miller	CIGARETTE TAX INCREASE FOR PUBLIC HEALTH.	H	01-31-2005	Ref To Com On Finance
H 36	Allred	EXPAND HOMESTEAD TAX BENEFIT VIA TAX CREDIT.	H	02-02-2005	Ref To Com On Finance
H 58	Moore	SECURITIES TRANSFER ON DEATH.	*H	04-12-2005	Re-ref Com On Finance
H 60	Dollar	INCORPORATE SWIFT CREEK.	H	02-03-2005	Ref To Com On Finance
H 61	Culpepper, III	INCOME TAX - EXEMPT CERTAIN MILITARY INCOME.	H	03-16-2005	Re-ref Com On Finance
H 84=	Nye	LONG-TERM CARE INSURANCE TAX CREDIT.	H	02-07-2005	Ref To Com On Finance
H 118=	Clary	REENACT LONG-TERM CARE INSURANCE TAX CREDIT.	H	02-09-2005	Ref To Com On Finance
H 148=	Howard	LONG-TERM CARE INSURANCE TAX CREDIT.	H	02-09-2005	Ref To Com On Finance
H 186	LaRoque	INCREASE UNIFORM JUROR FEES.	*H	03-15-2005	Re-ref Com On Finance
H 251=	Setzer	FIREFIGHTER/RESCUE SQUAD TAX DEDUCTION.	H	02-16-2005	Ref To Com On Finance
H 272	Allen	SANITARY DISTRICT SET-OFF DEBT COLLECTION.	*H	03-28-2005	Re-ref Com On Finance
H 283	Pierce	TAX CREDIT FOR EMPLOYING FELONS.	H	02-17-2005	Ref To Com On Finance
H 285	Pierce	TAX INCENTIVE - PREVENTIVE HEALTH CARE.	H	02-17-2005	Ref To Com On Finance
H 286	Weiss	INCREASE CIGARETTE TAX.	H	02-17-2005	Ref To Com On Finance
H 295=	Hilton	FIREFIGHTER/RESCUE SQUAD TAX DEDUCTION.	H	02-17-2005	Ref To Com On Finance
H 342	Gibson, III	REDUCE FRANCHISE TAX.	H	02-22-2005	Ref To Com On Finance
H 352	Holloway	SMALL BUSINESS TAX EXEMPTION.	H	02-23-2005	Ref To Com On Finance
H 378	Setzer	AIR MEDAL SPECIAL LICENSE PLATE.	H	02-24-2005	Ref To Com On Finance
H 379	Setzer	COLD WAR VETERAN SPECIAL LICENSE PLATE.	H	02-24-2005	Ref To Com On Finance
H 396	Holloway	INCREASE LONG-TERM CARE TAX CREDIT.	H	02-28-2005	Ref To Com On Finance
H 397	Howard	APPRENTICESHIP PROGRAM TAX CREDITS.	H	02-28-2005	Ref To Com On Finance
H 433	Insko	EARNED INCOME TAX CREDIT.	H	03-02-2005	Ref To Com On Finance
H 442	Faison	INCREASE JUROR FEES/COURT COSTS.	H	03-02-2005	Ref To Com On Finance
H 445=	Pate, Jr.	INCOME TAX CREDIT - ENERGY EFFICIENT HOMES.	H	03-02-2005	Ref To Com On Finance
H 469=	Current, Sr.	LEASE PURCHASE FOR SCHOOL WAREHOUSE.	*H	03-29-2005	Re-ref Com On Finance
H 491	Hilton	REDUCE HANDGUN PERMIT FEE.	H	03-07-2005	Ref To Com On Finance
H 504=	Wainwright	FUEL TAX REFUND FOR OFF-ROAD USE	H	03-07-2005	Ref To Com On Finance

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

Bill	Introducer	Short Title		Date	Latest Action
		BY PUMPERS.			
H 512=	Jeffus	INCOME TAX CREDIT FOR PUBLIC SCHOOL TEACHERS.	H	03-07-2005	Ref To Com On Finance
$ H 530	**Brown**	**HISTORIC OAK GROVE SCHOOL FUNDS.**	**H**	**08-02-2005**	**Re-ref Com On Finance**
H 566=	Gibson, III	MODERN ESCHEAT INVESTMENT PROGRAM.	H	04-20-2005	Re-ref Com On Finance
H 608=	Moore	CONSUMER CREDIT PROTECTION ACT.	H	03-14-2005	Ref To Com On Finance
H 621=	Wright	SMALL INSTALLMENT CONSUMER LOANS.	H	04-13-2005	Re-ref Com On Finance
H 623=	Goforth	AMEND TAXATION OF CONSTRUCTION MACHINERY.	H	03-14-2005	Ref To Com On Finance
$ H 625=	**Allen**	**ADVANCED VEHICLE RESEARCH CENTER INCENTIVE.**	**H**	**03-14-2005**	**Ref To Com On Finance**
H 634	Tolson	JUDICIAL DEPT. CRIMINAL BACKGROUND CHECKS.-AB	*H	03-28-2005	Re-ref Com On Finance
H 648	Moore	EXEMPT BUILDER'S INVENTORY.	H	03-16-2005	Ref To Com On Finance
H 682	Capps	OPERATION IRAQI FREEDOM REGISTRATION PLATES.	H	03-17-2005	Ref To Com On Finance
H 692=	Jeffus	GUILFORD BATTLEGROUND SPECIAL PLATE.	H	03-17-2005	Ref To Com On Finance
H 726=	Brubaker	SPECIAL OBLIGATION BONDS FOR UNC.-AB	H	03-17-2005	Ref To Com On Finance
H 745	Coates	WILD TURKEY FEDERATION SPECIAL PLATE.	H	03-17-2005	Ref To Com On Finance
H 770	Dickson	CLAY COUNTY OCCUPANCY TAX CHANGES.	*H	07-10-2006	Ref To Com On Finance
H 782	Wright	FACILITY QUALITY & SAFETY IMPROVEMENT-HHS.-AB	H	03-17-2005	Ref To Com On Finance
H 785	Wright	PUBLIC HOSPITAL INVESTMENT AUTHORITY.	*H	05-31-2005	Re-ref Com On Finance
H 802	Insko	CHAPEL HILL UTILITY TAX DISTRICT.	H	03-21-2005	Ref To Com On Finance
H 812=	Preston	SCUBA SPECIAL REGISTRATION PLATE.	H	03-21-2005	Ref To Com On Finance
H 815	Blust	OAK RIDGE VOLUNTARY ANNEXATIONS.	H	03-21-2005	Ref To Com On Finance
$ H 816	**Pate, Jr.**	**PROPERTY TAX EXCLUSION DISABLED VETERANS.**	**H**	**03-21-2005**	**Ref To Com On Finance**
H 824	Tucker	EMERGENCY MED. SERVICE AVAIL. FEE/DUPLIN CO.	*H	05-31-2005	Re-ref Com On Finance
H 834	Walker	NORTH WILKESBORO/LAND FOR PRISONS.	*H	03-30-2005	Re-ref Com On Finance
H 835	McGee	CONCEALED CARRY FOR LAW ENFORCEMENT OFFICERS.	H	05-17-2005	Re-ref Com On Finance
H 844	Moore	ASSIST DEPLOYING NATIONAL GUARD MEMBERS.	H	03-22-2005	Ref To Com On Finance

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

2005-2006 Biennium

Bill	Introducer	Short Title		Date	Latest Action
H 870	Preston	BUDDY PELLETIER SURFING FOUNDATION PLATE.	H	03-23-2005	Ref To Com On Finance
H 894	Hunter, Jr.	CREATE A MOBILE HOME DISPOSAL TAX.	H	03-24-2005	Ref To Com On Finance
H 903	England, M.D.	PERFUSIONISTS LICENSURE.	H	03-28-2005	Ref To Com On Finance
H 909	Gillespie	"CHOOSE LIFE" SPECIAL REGISTRATION PLATE.	H	03-28-2005	Ref To Com On Finance
H 918=	McComas	FILM INDUSTRY JOBS INCENTIVES.	H	03-28-2005	Ref To Com On Finance
H 931	Stam	TAX FAIRNESS IN EDUCATION.	H	03-28-2005	Ref To Com On Finance
H 932=	Hunter, Jr.	GATES LAND TRANSFER TAX.	H	03-28-2005	Ref To Com On Finance
H 936=	McLawhorn	INCOME TAX - MILITARY/NATIONAL GUARD EXEMPT.	H	03-28-2005	Ref To Com On Finance
$ H 942=	**Glazier**	**2005 MILITARY SUPPORT ACT.**	***H**	**06-14-2005**	**Re-ref Com On Finance**
$ H 948	**Owens, Jr.**	**FILM PRODUCTION RECRUITMENT STIMULUS.**	**H**	**03-29-2005**	**Ref to the Com on Finance and, if favorable, to the Com on Appropriations**
H 950	Owens, Jr.	TYRRELL LAND TRANSFER TAX.	H	03-29-2005	Ref To Com On Finance
H 965	Miller	DURHAM IMPACT FEE FOR SCHOOLS.	H	03-29-2005	Ref To Com On Finance
H 976	Blust	TAXPAYER COST RECOVERY.	H	03-29-2005	Ref To Com On Finance
H 980	Blust	CONFORM PERSONAL TAX DEDUCT AND EXEMPT TO IRC.	H	03-29-2005	Ref To Com On Finance
H 992	Starnes	INCREASE THE EXCISE TAX ON MALT BEVERAGES.	H	03-30-2005	Ref To Com On Finance
H 993	Gillespie	GEN. CONTRACTORS/FEE INCREASES.	H	03-30-2005	Ref To Com On Finance
H1013	Hill	COUNTY COMMISSIONER SPECIAL PLATE LIMIT.	H	03-31-2005	Ref To Com On Finance
H1036	McComas	AQUARIUM SOCIETY SPECIAL REGISTRATION PLATE.	H	03-31-2005	Ref To Com On Finance
H1062	Insko	ORANGE/CHATHAM COUNTY TRANSFER TAXES.	H	03-31-2005	Ref To Com On Finance
H1067	Insko	ORANGE/CHATHAM IMPACT TAX.	H	03-31-2005	Ref To Com On Finance
H1068	Justice	SURF CITY SATELLITE ANNEXATIONS.	H	03-31-2005	Ref To Com On Finance
H1083	Martin, III	FRIENDS OF NC NATURAL SCIENCES MUSEUM PLATES.	H	04-04-2005	Ref To Com On Finance
H1089	Blackwood, Jr.	TAX CREDIT - NONPUBLIC SCHOOL STUDENTS.	H	04-04-2005	Ref To Com On Finance
$ H1092	**Gibson, III**	**AMEND FISHING LICENSE REQUIREMENTS.**	***H**	**04-11-2005**	**Re-ref Com On Finance**
H1114	Holloway	EMERGENCY PERSONNEL TAX DEDUCTION.	H	04-05-2005	Ref To Com On Finance
H1122	Rayfield	REDUCE SALES TAX ON FUNERALS.	H	04-06-2005	Ref To Com On Finance
H1142	Michaux, Jr.	LOCAL TAX MENU WITH VOTER	H	04-07-2005	Ref To Com On Finance

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

Bill	Introducer	Short Title		Date	Latest Action
		APPROVAL.			
H1159=	Holloway	PRESENT-USE VALUE BUYOUT CREDITS.	H	04-11-2005	Ref To Com On Finance
$ H1160	**Holloway**	**DEDUCTION FOR S CORPORATION INCOME.**	**H**	**04-11-2005**	**Ref To Com On Finance**
H1197	Holliman	NATIONAL MS SOCIETY REGISTRATION PLATE.	H	04-13-2005	Ref To Com On Finance
H1212	Coleman	TAX FORM DONATION - BREAST CANCER SCREENINGS.	H	04-13-2005	Ref To Com On Finance
H1214	Blackwood, Jr.	TAX CREDIT - TOLL PAYMENTS.	H	04-13-2005	Ref To Com On Finance
H1223	Setzer	AMEND HISTORIC VEHICLE OWNER PLATES.	H	04-14-2005	Ref To Com On Finance
H1228	Underhill	CORVETTE CLUB SPECIAL REGISTRATION PLATE.	H	04-14-2005	Ref To Com On Finance
H1251	Wainwright	SALES TAX EXEMPTION FOR ITEMS USED IN R&D.	H	04-18-2005	Ref To Com On Finance
H1257	Pierce	TAX REFUND DONATION FOR THE ARTS.	H	04-18-2005	Ref To Com On Finance
H1267	Underhill	EXCLUDE PENSIONS FROM INCOME TAX.	H	04-18-2005	Ref To Com On Finance
H1270	Culpepper, III	AMEND REAL ESTATE APPRAISERS ACT/FEES.	H	04-19-2005	Ref To Com On Finance
H1274=	Bordsen	GLASS TECHNICIANS LICENSURE.	H	04-19-2005	Ref To Com On Finance
H1275=	Bordsen	LICENSURE/MOTOR VEH. REPAIR SHOPS/COLL. REP.	H	04-19-2005	Ref To Com On Finance
H1287	Haire	PRESENT USE VALUE EXEMPTION FOR FISH FARMS.	H	04-19-2005	Ref To Com On Finance
H1289	Sauls	AMEND MOTORCYCLE HELMET LAW.	H	04-19-2005	Ref To Com On Finance
H1296=	Hackney	RENEWABLE FUELS MOTOR FUELS TAX EXEMPTION.	H	04-20-2005	Ref To Com On Finance
H1313	Wright	INCREASE PROCESSING FEE FOR RETURNED CHECKS.	H	04-20-2005	Ref To Com On Finance
H1325	McLawhorn	TAX CREDIT FOR RECYCLING OYSTER SHELLS.	H	04-20-2005	Ref To Com On Finance
H1355	McMahan	COASTAL CONSERVATION ASSOCIATION PLATE.	H	04-21-2005	Ref To Com On Finance
H1360	McGee	EQUITY IN EXCISE TAXES ON ALCOHOLIC BEVERAGES.	H	04-21-2005	Ref To Com On Finance
H1369	Vinson	EXPAND RENEWABLE ENERGY TAX CREDIT.	H	04-21-2005	Ref To Com On Finance
H1370	Vinson	TAX CREDIT FOR MANUFACTURING FACILITIES.	H	04-21-2005	Ref To Com On Finance
H1374	Culpepper, III	PHARMACY BENEFITS MANAGER REGULATION ACT/FEES.	H	04-21-2005	Ref To Com On Finance
H1376=	Culpepper, III	GEN. CONTRACTORS/FEES/CIVIL	H	04-21-2005	Ref To Com On Finance

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

Bill	Introducer	Short Title		Date	Latest Action
		PENALTIES.			
H1386=	Gibson, III	CHANGE GAS TAX RATES/INCREASE TANK FEES.	H	04-21-2005	Ref To Com On Finance
H1421=	Jones	RANDLEMAN DAM BONDS.	H	04-21-2005	Ref To Com On Finance
H1433	Hollo	AMATEUR RADIO PLATE FEE ELIMINATED.	H	04-21-2005	Ref To Com On Finance
H1456	Blust	CHARITABLE ENTITY EXEMPTION STANDARD.	H	04-21-2005	Ref To Com On Finance
H1471	McGee	EXPAND DUTIES OF TAX COLLECTOR.	H	04-21-2005	Ref To Com On Finance
H1475	Wright	PUBLIC-PRIVATE PARTNER. INFRASTRUCTURE ACT.	H	04-21-2005	Ref To Com On Finance
H1481	Wilkins, Jr.	COMPOUNDING PHARMACY PERMITS/FEES.	H	04-21-2005	Ref To Com On Finance
H1519	Wright	AMEND MASSAGE THERAPY ACT/FEES/CRIM. CHECKS.	H	04-21-2005	Ref To Com On Finance
H1521=	McComas	OYSTER SHELLS/BAN LANDFILLING/TAX CREDIT	*H	05-17-2005	Re-ref Com On Finance
H1526=	Frye	AVERY COUNTY/HERITAGE PARK AUTHORITY.	*H	08-25-2005	Re-ref Com On Finance
H1529	Goodwin	ARC OF NORTH CAROLINA SPECIAL PLATE.	H	04-21-2005	Ref To Com On Finance
H1534	Gibson, III	MODULAR HOME SALES/INSTALLATION REQUIREMENTS.	H	04-21-2005	Ref To Com On Finance
H1537	Barnhart	MISCELLANEOUS CHANGES/MFG. HOME LAWS.	H	04-21-2005	Ref To Com On Finance
H1549	Brubaker	PROPERTY TAX COLLECTION ON MOBILE HOMES.	H	04-21-2005	Ref To Com On Finance
H1586	Harrell, III	TEXTILE MILLS REDEVELOPMENT.	H	05-05-2005	Ref To Com On Finance
H1595	Alexander	REDUCE EMISSIONS FROM MOBILE SOURCES PROGRAM.	H	05-05-2005	Ref To Com On Finance
H1613	Vinson	CENTRAL ADMINISTRATIVE OFFICE CREDIT.	H	05-09-2005	Ref To Com On Finance
H1618	Walend	BILL LEE TIER FORMULA.	H	05-10-2005	Ref To Com On Finance
H1619	Walend	DEVELOPMENT TIER DESIGNATION FORMULA.	H	05-10-2005	Ref To Com On Finance
H1621	Culpepper, III	CHARITABLE BINGO FEE/PRIZE LIMITS INCREASED.	H	05-11-2005	Ref To Com On Finance
H1622	Culpepper, III	INSURANCE GUARANTY BONDS.	H	05-11-2005	Ref To Com On Finance
H1623	Insko	INCREASE EXCISE TAX ON CIGARETTES.	H	05-11-2005	Ref To Com On Finance
H1632	Luebke	FINANCE LAWS 3.	H	05-11-2005	Ref To Com On Finance
H1634	Blackwood, Jr.	STIMULATE ECONOMY MANUFACTURING.	H	05-11-2005	Ref To Com On Finance

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

2005-2006 Biennium

Bill	Introducer	Short Title		Date	Latest Action
H1638	Saunders	ALLOWABLE 911 EXPENDITURES/CAP CHARGE/STUDY.	*H	07-28-2005	Re-ref Com On Finance
H1646	Allred	TINTED WINDOW INSPECTIONS.	H	05-11-2005	Ref To Com On Finance
H1668	Gibson, III	AUTISM SOCIETY OF NC REGISTRATION PLATE.	H	05-12-2005	Ref To Com On Finance
H1682	Harrison	ALTERNATIVE FUEL CREDITS/ENERGY CREDITS PGM.	H	05-12-2005	Ref To Com On Finance
H1683	Harrison	RAISE CAMA FEES.	H	05-12-2005	Ref To Com On Finance
H1687	Allen	INFRASTRUCTURE FOUNDATION FOR 21ST CENTURY NC.	H	05-12-2005	Ref To Com On Finance
H1708	Wright	DENR FEES RADIOACTIVE MATERIAL/X-RAY/TANNING.	H	05-12-2005	Ref To Com On Finance
H1715	Luebke	RENEWABLE ENERGY TAX CREDITS.	H	05-12-2005	Ref To Com On Finance
H1716	Luebke	LEAD HAZARD REDUCTION TAX CREDIT.	H	05-12-2005	Ref To Com On Finance
H1722	Brubaker	WILDLIFE CONSERVATION - PRESENT-USE VALUE.	H	05-12-2005	Ref To Com On Finance
H1729	Earle	NC TRAVEL AND TOURISM INVESTMENT ACT.	H	05-12-2005	Ref To Com On Finance
H1731	Stiller	SHARE THE ROAD SPECIAL REGISTRATION PLATE.	H	05-12-2005	Ref To Com On Finance
$ H1746	**England, M.D.**	**CIGARETTE TAX/COUNTY SHARE OF MEDICAID.**	**H**	**05-12-2005**	**Ref To Com On Finance**
H1752	Allred	SALES TAX ON OFF-ROAD VEHICLES.	H	05-12-2005	Ref To Com On Finance
H1758	McComas	INCREASE WATER & SEWER AUTHORITY PER DIEM.	H	05-12-2005	Ref To Com On Finance
H1764	Folwell	SALES TAX REFUND REFORM ACT/REDUCE COR. RATE.	H	05-12-2005	Ref To Com On Finance
H1766=	Martin, III	ALTERNATIVE FUEL VEHICLE TAX CREDIT.	H	05-12-2005	Ref To Com On Finance
H1767	Gibson, III	QUALIFIED VENTURE CAPITAL GAIN EXEMPTION.	H	05-12-2005	Ref To Com On Finance
H1769	Gibson, III	STATEWIDE WASTE DISPOSAL TAX.	H	05-12-2005	Ref To Com On Finance
H1777	McComas	LOCAL OPTION SALES TAX AND HOMESTEAD RELIEF.	H	05-12-2005	Ref To Com On Finance
H1778	Gibson, III	RISK-BASED ENVIRONMENTAL REMEDIATION/FUND.	*H	07-13-2006	Re-ref Com On Finance
H1781	Rhodes	COLLEGE SAVINGS PLAN TAX DEDUCTIBLE.	H	05-12-2005	Ref To Com On Finance
H1802	Allred	REDUCE MOTOR FUELS TAX.	H	05-09-2006	Ref To Com On Finance
$ H1809	**Owens, Jr.**	**CLEAN WATER BONDS ACT OF 2006.**	**H**	**05-09-2006**	**Ref To Com On Finance**
H1823=	Allen	ROANOKE RAPIDS ANNEXATION.	H	05-17-2006	Re-ref Com On Finance
H1832=	Holliman	SUNSET TAX INCREASES ONE YEAR	H	05-10-2006	Ref To Com On Finance

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

Bill	Introducer	Short Title		Date	Latest Action
		EARLY.			
H1839=	Allred	EXPAND HOMESTEAD EXEMPTION VIA TAX CREDIT.	H	05-10-2006	Ref To Com On Finance
H1842	Moore	ENSURE INTEGRITY OF HIGHWAY TRUST FUND.	H	05-10-2006	Ref To Com On Finance
H1853=	Kiser	CAP VARIABLE RATE OF GASOLINE EXCISE TAX.	H	05-10-2006	Ref To Com On Finance
H1865	Spear	SPECIAL PLATE FOR DIRECTORS OF ELECTIONS.	H	05-11-2006	Ref To Com On Finance
H1900	Ray	RECIPIENT OF STOCK CAR SPECIAL PLATE FUNDS.	H	06-08-2006	Assigned To Finance
H1906	Frye	HOME HEATING FUEL TAX EXEMPTION.	H	05-11-2006	Ref To Com On Finance
H1914=	Setzer	REINSTATE LEA SALES TAX REFUND.	H	05-15-2006	Ref To Com On Finance
H1923=	Daughtry	REINSTATE LEA SALES TAX REFUND.	H	05-15-2006	Ref To Com On Finance
$ H1924	**Ross**	**AFFORDABLE HOUSING BONDS ACT OF 2006.**	**H**	**05-15-2006**	**Ref To Com On Finance**
H1931	Haire	AMEND BILL LEE TIER DESIGNATION.	H	05-15-2006	Ref To Com On Finance
H1934	Parmon	MANUFACTURERS ENERGY TAX EXEMPTIONS.	H	05-15-2006	Ref To Com On Finance
H1949=	Blust	ELIMINATE "TEMPORARY" TAXES.	H	05-15-2006	Ref To Com On Finance
H1962	Luebke	FRANCHISE TAX LOOPHOLE CLOSING.	H	06-27-2006	Re-ref Com On Finance
H1978	Tolson	TAX INCENTIVES FOR ETHYL ALCOHOL.	H	05-16-2006	Ref To Com On Finance
$ H1999=	**Sutton**	**UNC PEMBROKE NURSING EDUCATION FACILITY.**	**H**	**05-16-2006**	**Ref To Com On Finance**
H2008=	Howard	REENACT LONG-TERM CARE INSURANCE TAX CREDIT.	H	05-16-2006	Ref To Com On Finance
H2066=	Wainwright	REWARDING WORK TAX CREDIT.	H	05-18-2006	Ref To Com On Finance
H2067	Johnson	REDUCE CDL LICENSE FEE FOR SCHOOL BUS DRIVERS.	*H	07-11-2006	Re-ref Com On Finance
H2072	Harrison	SPECIAL PLATE FOR LUNG ASSOCIATION.	H	05-18-2006	Ref To Com On Finance
H2073	Harrison	SPECIAL PLATE FOR EMT'S.	H	05-18-2006	Ref To Com On Finance
H2075	Moore	MILITARY PERSONNEL INCOME TAX CHANGE.	H	05-18-2006	Ref To Com On Finance
H2095=	Rapp	LONG-TERM CARE INSURANCE TAX CREDIT.	H	05-18-2006	Ref To Com On Finance
H2099	McLawhorn	RETIRED HIGHWAY PATROL MOTORCYCLE LIC. PLATE.	H	05-18-2006	Ref To Com On Finance
H2151=	Justice	SPECIAL PLATE FOR RETIRED PIEDMONT EMPLOYEES.	H	05-18-2006	Ref To Com On Finance
H2156	Gibson, III	TAX CREDITS FOR CERTAIN REAL PROP. DONATIONS.	H	05-18-2006	Ref To Com On Finance

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

2005-2006 Biennium

Bill	Introducer	Short Title		Date	Latest Action
H2157	Gibson, III	VIDEO GAME PRODUCER TAX CREDIT.	H	05-18-2006	Ref To Com On Finance
H2158	Gibson, III	MOTORSPORTS ECONOMIC INCENTIVES.	H	05-18-2006	Ref To Com On Finance
H2172=	Harrell, III	REDUCE AND CAP GAS TAX.	H	05-18-2006	Ref To Com On Finance
H2205=	Warren	FERTILIZER SPREADERS/REGISTRATION EXEMPTION.	H	05-18-2006	Ref To Com On Finance
H2224	Tucker	TAX EXEMPT. FOR HIGH-FUEL-ECONOMY CARS.	H	05-22-2006	Ref To Com On Finance
H2239	Dollar	SUNSET TAX INCREASES EARLY.	H	05-22-2006	Ref To Com On Finance
H2245	Underhill	SPECIAL PLATE FOR U.S. EQUINE RESCUE LEAGUE.	H	05-22-2006	Ref To Com On Finance
H2250	Pierce	GRASSROOTS ARTS PROGRAM TAX CHECK-OFF.	H	05-22-2006	Ref To Com On Finance
H2261=	Holliman	INCOME TAX - TITLE 32 NATIONAL GUARD EXEMPT.	H	05-22-2006	Ref To Com On Finance
H2265	Tucker	TAX CREDIT FOR HIGH-FUEL-ECONOMY CARS.	H	05-22-2006	Ref To Com On Finance
H2293	Hunter, Jr.	GATES LAND TRANSFER TAX.	H	05-22-2006	Ref To Com On Finance
$ H2317	**Carney**	**TEACHER RETENTION AND RECRUITMENT.**	**H**	**05-22-2006**	**Ref to the Com on Finance and, if favorable, to the Com on Appropriations**
H2346	Church, Sr.	REDUCE WHOLESALE DRUG DISTRIBUTOR LICENSE FEE.	H	05-23-2006	Ref To Com On Finance
$ H2384	**Gibson, III**	**CAP VARIABLE RATE OF THE GASOLINE EXCISE TAX.**	**H**	**05-23-2006**	**Ref To Com On Finance**
H2394	Langdon, Jr.	DELAY CIGARETTE TAX INCREASE BY 12 MONTHS.	H	05-24-2006	Ref To Com On Finance
H2433	Luebke	FINANCE LAW CHANGES - 1.	H	05-24-2006	Ref To Com On Finance
H2434	Luebke	FINANCE LAW CHANGES - 2.	H	05-24-2006	Ref To Com On Finance
H2435	Luebke	FINANCE LAW CHANGES - 3.	H	05-24-2006	Ref To Com On Finance
H2454	Sutton	ROBESON COUNTY OCCUPANCY TAX.	H	05-24-2006	Ref To Com On Finance
H2459	Insko	N.C. CHILDREN'S PROMISE.	H	05-24-2006	Ref To Com On Finance
H2460	Yongue	SALES TAX EXEMPTION FOR LOCAL SCHOOL UNITS.	H	05-24-2006	Ref To Com On Finance
H2461=	Cole	CLARIFY MOTOR VEHICLE TAX COLLECTIONS.	H	05-24-2006	Ref To Com On Finance
H2462=	Alexander	EXEMPT GOLD, SILVER, PLATINUM FROM SALES TAX.	H	05-24-2006	Ref To Com On Finance
H2495	Holloway	DEDUCTION FOR S CORPORATION INCOME.	H	05-25-2006	Ref To Com On Finance
H2511	Weiss	LEUKEMIA AND LYMPHOMA SOCIETY SPECIAL PLATE.	H	05-25-2006	Ref To Com On Finance
H2512=	Ray	MOTORSPORTS INCENTIVES.	H	05-25-2006	Ref To Com On Finance

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

2005-2006 Biennium

Bill	Introducer	Short Title		Date	Latest Action
H2513	Ray	IMPROVE REGULATION OF LOAN BROKERS.	H	05-25-2006	Ref To Com On Finance
H2517	Clary	REINSTATE SALES TAX REFUND TO LEA'S.	H	05-25-2006	Ref To Com On Finance
H2537	Warren	INDUSTRIAL PARK - ENTERPRISE TIER DESIGNATION.	H	05-25-2006	Ref To Com On Finance
$ H2597	**Spear**	**PUV - WORKING WATERFRONTS.**	**H**	**05-25-2006**	**Ref To Com On Finance**
H2631	Saunders	COUNTY VEHICLE TAX FOR PUBLIC TRANSPORTATION.	H	05-25-2006	Ref To Com On Finance
H2640	Miller	INCREASE MORTGAGE LENDING FEES.	H	05-25-2006	Ref To Com On Finance
H2645=	Cole	INTERNET DATA CENTER FACILITIES TAX EXEMPTION.	H	05-25-2006	Ref To Com On Finance
H2681	McComas	SALES AND USE TAX EXEMPTION FOR BAKED GOODS.	H	05-25-2006	Ref To Com On Finance
H2682	McComas	NEW HANOVER COUNTY INFRASTRUCTURE REFERENDUM.	H	06-29-2006	Re-ref Com On Finance
H2683	Vinson	CAROLINA AVIATION MUSEUM SPECIAL PLATE.	H	05-25-2006	Ref To Com On Finance
H2684	McComas	NEW HANOVER&WILMINGTON OCCUPANCY TAX CHANGES.	H	05-25-2006	Ref To Com On Finance
$ H2685=	**McComas**	**UNIVERSITY SELF-LIQUIDATING PROJECTS.**	**H**	**05-25-2006**	**Ref To Com On Finance**
H2690	Pierce	SPECIAL PLATE FOR PRINCE HALL MASONS.	H	05-25-2006	Ref To Com On Finance
H2714	Holloway	EMERGENCY PERSONNEL TAX DEDUCTIONS.	H	05-25-2006	Ref To Com On Finance
H2718	Holloway	SMALL BUSINESS TAX EXEMPTION.	H	05-25-2006	Ref To Com On Finance
H2728=	Gibson, III	SALES TAX ON R&D EQUIPMENT.	H	05-25-2006	Ref To Com On Finance
$ H2742	**Clary**	**LICENSE HOSPICE CARE ORGANIZATIONS.**	**H**	**06-08-2006**	**Assigned To Finance**
H2765	Alexander	SALES TAX REFUND FOR TDAS.	H	05-29-2006	Ref To Com On Finance
H2770	Vinson	CERTAIN MILITARY PAY EXEMPT.	H	05-29-2006	Ref To Com On Finance
$ H2780=	**Yongue**	**PUBLIC-PRIVATE PARTNERSHIPS FOR SCHOOLS.**	**H**	**06-01-2006**	**Re-ref Com On Finance**
H2802	Gibson, III	REDUCE SALES TAX/FREEZE COUNTY MEDICAID COSTS.	H	05-29-2006	Ref To Com On Finance
H2805	Allred	TINTED WINDOW INSPECTIONS.	H	05-29-2006	Ref To Com On Finance
H2811	Dollar	PUBLIC SCHOOL BOND ACT OF 2006.	H	05-29-2006	Ref To Com On Finance
H2821	Luebke	NO SALES TAX REFUND FOR ALCOHOL SALES.	H	05-29-2006	Ref To Com On Finance
$ H2827	**Allen**	**LAND AND WATER CONSERVATION BOND ACT OF 2006.**	**H**	**05-29-2006**	**Ref To Com On Finance**

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

2005-2006 Biennium

Bill	Introducer	Short Title		Date	Latest Action
H2830=	Yongue	PUBLIC SCHOOL FACILITIES BOND ACT OF 2006.	H	05-29-2006	Ref To Com On Finance
H2844	Gibson, III	WORK OPPORTUNITY TAX CREDIT.	H	05-29-2006	Ref To Com On Finance
H2845	Haire	STATEWIDE WASTE TIPPING FEES/PERMIT FEES.	H	05-29-2006	Ref To Com On Finance
H2864	Yongue	COMMUNITY COLLEGE SALES TAX REFUND.	H	05-29-2006	Ref To Com On Finance
S 339	Holloman	OMNIBUS OCCUPANCY TAXES-III	*H	07-05-2006	Re-ref Com On Finance
S 540	Clodfelter	FRANCHISE TAX LOOPHOLE CLOSING.	*H	04-13-2005	Ref To Com On Finance
S 551=	East	PRESENT-USE VALUE BUYOUT CREDITS.	H	05-27-2005	Ref To Com On Finance
S1077	Rand	MOTORCYCLE LEARNER'S PERMIT.	*H	06-20-2005	Ref To Com On Finance
S1081	Berger	PROCEDURES FOR ADVERTISING TAX LIENS.	H	06-02-2005	Ref To Com On Finance
S1144=	Boseman	FILM INDUSTRY JOBS INCENTIVES.	*H	06-22-2005	Ref To Com On Finance
S1157=	Albertson	OYSTER SHELLS/TAX CREDIT.	*H	06-28-2006	Ref To Com On Finance
S1203	Albertson	AGRARIAN GROWTH ZONES - BILL LEE.	H	06-27-2006	Ref To Com On Finance
S1213	Boseman	FILM INCENTIVE CHANGES.	*H	06-08-2006	Ref To Com On Finance
S1348	Swindell IV	DORTCHES/RUTHERFORD COUNTY CHANGES.	*H	06-29-2006	Re-ref Com On Finance
S1458=	Hoyle	RENTAL CAR TAX FOR TRANSIT CHANGES.	*H	07-05-2006	Ref To Com On Finance
S1552	Webster	ADDITIONAL PERSONAL INCOME TAX FILING OPTION.	*H	07-05-2006	Re-ref Com On Finance
S1563	Clodfelter	EXTEND SUNSET ON CERTAIN TAX CREDITS.	*H	06-27-2006	Ref To Com On Finance
S1692=	Hoyle	SALES TAX ON R&D EQUIPMENT.	*H	06-08-2006	Ref To Com On Finance
$ S1892=	**Hoyle**	**SPECIAL INDEBTEDNESS PROJECTS.**	***H**	**07-11-2006**	**Ref To Com On Finance**
S1964=	Dalton	INTERNET DATA CENTER FACILITIES TAX EXEMPTION.	*H	07-05-2006	Ref To Com On Finance
S2011	Hoyle	RAILROAD CARS SALES TAX CHANGES.	H	06-19-2006	Ref To Com On Finance

'$' indicates the bill is an appropriations bill.
A bold line indicates the bill is an appropriations 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

House & Senate Committee on Finance

(JOINT MEETING)

Minutes

~

May 10, 2006

The House and Senate Committees on Finance met jointly on Wednesday, May 10, 2006 at 1:00 pm in Room 544 of the Legislative Office Building. The following House of Representatives members were present: Chairpersons Alexander, Gibson, Howard, Luebke, McComas and Wainwright; Vice-Chairs Daughtridge, Hill, Ross, Weiss and Womble; Representatives B. Allen, Blackwood, Blust, Bordsen, Capps, Carney, Dockham, Faison, Fisher, Folwell, Glazier, Hackney, Harrell, Holliman, Insko, Lewis, Lucas, McGee, Rayfield, Underhill, Vinson, Walend, and Wiley. The following Senators were present: Chairmen Kerr and Hoyle, Senators Clodfelter, Hartsell, Albertson, Allran, Apodaca, Atwater, Blake, Bland, Boseman, Brock, Dannelly, Hagan, Hunt, Jenkins, Kinnaird, Nesbitt, Purcell, Rand, Stevens, Swindell. Also present were House Sergeant-at-Arms Bill Freeman, Fred Hines, Dusty Rhodes, and Walter Spell, and Senate Sergeant-at-Arms Cecil Goins, Charles Marsalis, George Robinson, and Leslie Wright. Staff persons present included Cindy Avrette, Rodney Bizzell, Brenna Erford, Trina Griffin, Canaan Huie, Linda Millsaps, and Martha Walston. The Agenda and Visitor Registration Sheet are attached and incorporated into these minutes as **attachments 1 and 2.**

Senate Finance Chairman Kerr called the meeting to order at 1:06 pm and recognized Vance Holloman, North Carolina Deputy State Treasurer, who shared a power-point presentation (see **attachment 3**) outlining the results of a debt affordability study (see **attachment 4**) for the State. The study gave a technical explanation of debt affordability and concluded that the State government can still accept additional debt in the amount of $214.4 million per year for the next 10 years and remain within the target range to maintain a good credit rating. Following the explanation, Representative Blackwood was recognized and asked if the debt affordability study also took into account the debts incurred by local governments. Mr. Holloman explained that the study only reviewed the debt affordability of the State. Chairman Kerr then recognized Senator Jenkins who asked if he would advise using bonds to fund highway construction since construction costs have an annual inflation rate of 30%. Mr. Holloman responded saying that highway construction would be an area where using bond money would benefit the State in the long-run, but would not affect the debt affordability discussed in his report since transportation funds are held exclusively in the Highway Trust Fund.

Chairman Kerr then recognized Crawford Crenshaw from the Land for Tomorrow Organization who shared his group's proposal for State funds that might originate from the selling of new bonds. Mr. Crenshaw's proposal involved a total of $200 million in bond money for land acquisition and the protection of North Carolina's streams. Continuing with the presentation, Kate

Dixon, the Executive Director of Land for Tomorrow, presented a power-point slideshow (see **attachment 5**) that detailed the organization's proposal for the State. Following the presentation, Representative Daughtridge was recognized and asked what the appropriate policy should be for the State when land is bought from poorer counties and the county's property tax base is decreased as a result. Chairman Kerr recognized Mr. Crawford who stated that a typical solution to the problem is for the state to pay the county ten times the amount of the initial loss in property tax revenue.

The following presentation discussed using bonds to fund infrastructure for water and sewer needs. Chairman Kerr first recognized Dempsey Benton, the Chief Deputy Secretary of the NC Department of Environment and Natural Resources, who explained the need for North Carolina to invest in water and sewer infrastructure. Billy Ray Hall, the Executive Director of the North Carolina Rural Center, continued with the presentation of the North Carolina Water 2030 Initiative, which is detailed in **attachment 6**. In short, Mr. Hall explained that North Carolina faced nearly $7 billion in water and sewer infrastructure needs in the next five years alone. He recommended a bond of $1 billion from the State to begin to deal with these costs.

The Secretary of the Department of Health and Human Services, Carmon Odom, was then recognized by Chairman Kerr who gave an overview of the needs in new capital improvements for her department. Dr. Leah Devlin, the Acting Health Director and Director of the Division of Public Health in the Department of Health and Human Services, was then recognized to elaborate on some of the capital needs. Dr. Devlin first recognized Dr. Lou F. Turner, the future director of Emergency Preparedness at DHHS, who was present to answer any specific questions from the Committee. She then proceeded to detail the need for a new Public Health Laboratory for the State of North Carolina using a power-point presentation (see **attachment 7**) and a provided a letter to the Senators and Representative explaining their proposal (see **attachment 8**). Chairman Kerr then recognized Terry Hatcher, the Director of the Office of Property and Construction in the NC Department of Health and Human Services. Mr. Hatcher described how two of the State's Psychiatric Hospitals do not adequately provide for the needs of the mentally ill of this State and how funding is desperately needed for their replacement. He provided a handout for the members (see **attachment 9**) that further explains the need for additional funding for capital.

The Director of NC Housing Finance Agency, Bob Kucab, was then recognized by Chairman Kerr to discuss public housing needs in North Carolina. Mr. Kucab explained how the NC Housing Finance Agency helps fund the construction of 6,000 homes and apartments each year. He shared a handout with the members of the Committee (see **attachment 10**) that referred to the growing need for aid in home ownership for the people in North Carolina and supported a $50 million bond to assist his agency's efforts.

Following Mr. Kucab's discussion, Jerry Hancock with the Low Wealth School Consortium was recognized and spoke about the need for new schools across North Carolina. Mr. Hancock proposed that the State move forward with issuing bonds immediately for new school construction and pay the debt service on the bonds with the lottery revenues already earmarked for school construction. Following this, Senator Blake was recognized and asked if any thought had been given to the used of privately built schools that could be leased by the state. Mr. Hancock responded that the idea was certainly one that could be incorporated into a bill on the issue.

Chairman Kerr then thanked the State Treasurer's Office for its presentations and the other organizations present for expressing their needs to the Joint Committee.

As there was no further business, Chairman Kerr then adjourned the meeting at 3:00pm.

Respectfully submitted,

Senator Kerr
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:

1. Agenda
2. Visitor Registration Sheet
3. Debt Affordability Power-point Presentation from the Office of State Treasurer
4. Debt Affordability Study
5. Land for Tomorrow Power-point Presentation
6. North Carolina Water 2030 Initiative Handout from the NC Rural Center
7. Critical Preparedness Infrastructure Handout from DHHS Office of Public Health
8. Letter from the NC Department of Crime Control and Public Safety
9. Replacement of State Psychiatric Hospitals Handout from DHHS
10. Housing Trust Fund Handout from NC Housing Finance Agency

North Carolina General Assembly

House & Senate Committee on Finance

(JOINT MEETING)

Minutes

~

May 10, 2006

The House and Senate Committees on Finance met jointly on Wednesday, May 10, 2006 at 1:00 pm in Room 544 of the Legislative Office Building. The following House of Representatives members were present: Chairpersons Alexander, Gibson, Howard, Luebke, McComas and Wainwright; Vice-Chairs Daughtridge, Hill, Ross, Weiss and Womble; Representatives B. Allen, Blackwood, Blust, Bordsen, Capps, Carney, Dockham, Faison, Fisher, Folwell, Glazier, Hackney, Harrell, Holliman, Insko, Lewis, Lucas, McGee, Rayfield, Underhill, Vinson, Walend, and Wiley. The following Senators were present: Chairmen Kerr and Hoyle, Senators Clodfelter, Hartsell, Albertson, Allran, Apodaca, Atwater, Blake, Bland, Boseman, Brock, Dannelly, Hagan, Hunt, Jenkins, Kinnaird, Nesbitt, Purcell, Rand, Stevens, Swindell. Also present were House Sergeant-at-Arms Bill Freeman, Fred Hines, Dusty Rhodes, and Walter Spell, and Senate Sergeant-at-Arms Cecil Goins, Charles Marsalis, George Robinson, and Leslie Wright. Staff persons present included Cindy Avrette, Rodney Bizzell, Brenna Erford, Trina Griffin, Canaan Huie, Linda Millsaps, and Martha Walston. The Agenda and Visitor Registration Sheet are attached and incorporated into these minutes as **attachments 1 and 2**.

Senate Finance Chairman Kerr called the meeting to order at 1:06 pm and recognized Vance Holloman, North Carolina Deputy State Treasurer, who shared a power-point presentation (see **attachment 3**) outlining the results of a debt affordability study (see **attachment 4**) for the State. The study gave a technical explanation of debt affordability and concluded that the State government can still accept additional debt in the amount of $214.4 million per year for the next 10 years and remain within the target range to maintain a good credit rating. Following the explanation, Representative Blackwood was recognized and asked if the debt affordability study also took into account the debts incurred by local governments. Mr. Holloman explained that the study only reviewed the debt affordability of the State. Chairman Kerr then recognized Senator Jenkins who asked if he would advise using bonds to fund highway construction since construction costs have an annual inflation rate of 30%. Mr. Holloman responded saying that highway construction would be an area where using bond money would benefit the State in the long-run, but would not affect the debt affordability discussed in his report since transportation funds are held exclusively in the Highway Trust Fund.

Chairman Kerr then recognized Crawford Crenshaw from the Land for Tomorrow Organization who shared his group's proposal for State funds that might originate from the selling of new bonds. Mr. Crenshaw's proposal involved a total of $200 million in bond money for land acquisition and the protection of North Carolina's streams. Continuing with the presentation, Kate

Dixon, the Executive Director of Land for Tomorrow, presented a power-point slideshow (see **attachment 5**) that detailed the organization's proposal for the State. Following the presentation, Representative Daughtridge was recognized and asked what the appropriate policy should be for the State when land is bought from poorer counties and the county's property tax base is decreased as a result. Chairman Kerr recognized Mr. Crawford who stated that a typical solution to the problem is for the state to pay the county ten times the amount of the initial loss in property tax revenue.

The following presentation discussed using bonds to fund infrastructure for water and sewer needs. Chairman Kerr first recognized Dempsey Benton, the Chief Deputy Secretary of the NC Department of Environment and Natural Resources, who explained the need for North Carolina to invest in water and sewer infrastructure. Billy Ray Hall, the Executive Director of the North Carolina Rural Center, continued with the presentation of the North Carolina Water 2030 Initiative, which is detailed in **attachment 6**. In short, Mr. Hall explained that North Carolina faced nearly $7 billion in water and sewer infrastructure needs in the next five years alone. He recommended a bond of $1 billion from the State to begin to deal with these costs.

The Secretary of the Department of Health and Human Services, Carmon Odom, was then recognized by Chairman Kerr who gave an overview of the needs in new capital improvements for her department. Dr. Leah Devlin, the Acting Health Director and Director of the Division of Public Health in the Department of Health and Human Services, was then recognized to elaborate on some of the capital needs. Dr. Devlin first recognized Dr. Lou F. Turner, the future director of Emergency Preparedness at DHHS, who was present to answer any specific questions from the Committee. She then proceeded to detail the need for a new Public Health Laboratory for the State of North Carolina using a power-point presentation (see **attachment 7**) and a provided a letter to the Senators and Representative explaining their proposal (see **attachment 8**). Chairman Kerr then recognized Terry Hatcher, the Director of the Office of Property and Construction in the NC Department of Health and Human Services. Mr. Hatcher described how two of the State's Psychiatric Hospitals do not adequately provide for the needs of the mentally ill of this State and how funding is desperately needed for their replacement. He provided a handout for the members (see **attachment 9**) that further explains the need for additional funding for capital.

The Director of NC Housing Finance Agency, Bob Kucab, was then recognized by Chairman Kerr to discuss public housing needs in North Carolina. Mr. Kucab explained how the NC Housing Finance Agency helps fund the construction of 6,000 homes and apartments each year. He shared a handout with the members of the Committee (see **attachment 10**) that referred to the growing need for aid in home ownership for the people in North Carolina and supported a $50 million bond to assist his agency's efforts.

Following Mr. Kucab's discussion, Jerry Hancock with the Low Wealth School Consortium was recognized and spoke about the need for new schools across North Carolina. Mr. Hancock proposed that the State move forward with issuing bonds immediately for new school construction and pay the debt service on the bonds with the lottery revenues already earmarked for school construction. Following this, Senator Blake was recognized and asked if any thought had been given to the used of privately built schools that could be leased by the state. Mr. Hancock responded that the idea was certainly one that could be incorporated into a bill on the issue.

Chairman Kerr then thanked the State Treasurer's Office for its presentations and the other organizations present for expressing their needs to the Joint Committee.

As there was no further business, Chairman Kerr then adjourned the meeting at 3:00pm.

Respectfully submitted,

Senator Kerr
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:

1. Agenda
2. Visitor Registration Sheet
3. Debt Affordability Power-point Presentation from the Office of State Treasurer
4. Debt Affordability Study
5. Land for Tomorrow Power-point Presentation
6. North Carolina Water 2030 Initiative Handout from the NC Rural Center
7. Critical Preparedness Infrastructure Handout from DHHS Office of Public Health
8. Letter from the NC Department of Crime Control and Public Safety
9. Replacement of State Psychiatric Hospitals Handout from DHHS
10. Housing Trust Fund Handout from NC Housing Finance Agency

Joint Senate and House Finance Committee

MEETING AGENDA

May 10, 2006
Room 544, LOB
1:00 p.m.

I. **State of North Carolina Debt Affordability Study**
Vance Holloman, Deputy Treasurer

II. **Land for Tomorrow**
- *Crawford Crenshaw, Chair, Land for Tomorrow*
- *Kate Dixon, Executive Director, Land for Tomorrow*

III. **Infrastructure for Water and Sewer Needs**
- *Billy Ray Hall, Executive Director, N.C. Rural Center*
- *Dempsey Benton, Chief Deputy Secretary, DENR*

IV. **Department of Health and Human Resources Capital Needs**
Carmon Hooker Odom, Secretary, DHHS
- **North Carolina State Public Health Lab**
  Dr. Leah Devlin, Acting Health Director and Director of the Division of Public Health, DHHS
- **Replacement of two State Psychiatric Hospitals: Cherry and Broughton**
  Terry Hatcher, Director of Office of Property and Construction, DHHS

V. **Public Housing Capital Needs**
Bob Kucab, Director, NC Housing Finance Agency

VI. **Other Needs**

V. **Adjournment**

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

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

DAY & DATE: **Wednesday, May 10, 2006**

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

LOCATION: **Room 544, LOB**

The following will be considered:

Joint Meeting with Senate Committee on Finance for a presentation from the Office of State Treasurer on Debt Affordability Study.

(PLEASE NOTE: Parties interested in financing proposed projects with bond revenues will be present to address the Joint Committee.)

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

I hereby certify this notice was filed by the committee clerk at the following offices at **4:05 pm** on **May 8, 2006**:

X Principal Clerk
X Reading Clerk - House Chamber

Jason A. Cannon (Committee Clerk)

ATTACHMENT 2

VISITOR REGISTRATION SHEET

JOINT MEETING - HOUSE & SENATE FINANCE — May 10, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lou Turner	DPH
Patricic Buffkin	Alley Assoc. INC
Amy Tidovsky - Wolfe	The Nature Conservancy Durham NC 27702
Jim Lora	OSBM
Chris Harder	OSBM
Jo... Holm	CWMTF
Henry M Concasten	LCA
Lisa Riegel	Natural Heritage Trust Fund
Lori Ann Harris	LAHTA

VISITOR REGISTRATION SHEET

Joint Meeting of House and Senate Finance — May 10, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
ABBY PARCELL	NC DEPT. OF STATE TREASURER
Michael Nelson	Conservation Council
Crawford Creighton	Land for Tomorrow
Sue S. Sodarke	NC REGIONAL COUNCILS ASSOC, PRES.
John Fuquay	Fayetteville Observer
Dempsey Benton	DENR
Billy Ray Hall	N.C Rural Center
Reid Wilson	Conservation Trust for NC 1028 Washington St Raleigh 27605
Paul Y. Johnson	Fayetteville Inc.

VISITOR REGISTRATION SHEET

Joint Meeting of House and Senate Finance — May 10, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kelly Calabria	Capstrat
Marge Anders Limbert	Land for Tomorrow
[signature]	NC Railway Assn.
Vance Holloman	St. Treasurer
Bill McNeil	NC Rural Center
David Meredith	NC State Grange
Russ Dubosky	Southern Strategy Group
Emily MacNaughton	NCPAPA
[signature]	Public School Forum
Kate Dixon	Land for Tomorrow

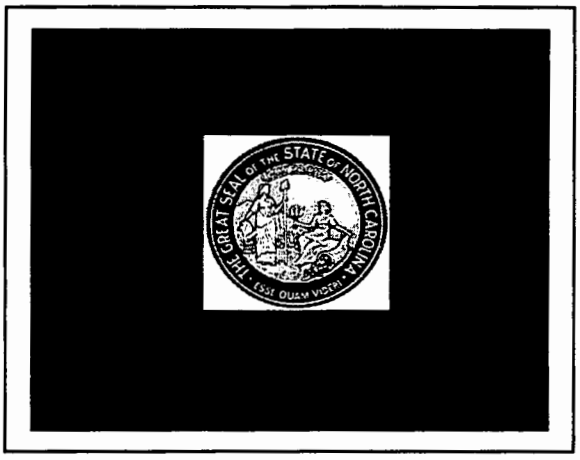
VISITOR REGISTRATION SHEET

Joint Meeting of House and Senate Finance — May 10, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Stella McKenny	NC Treasurer's Office
Chad Hinton	Civitas Institute
Jeff Mixon	"
Jennifer Wimmer	OSBM
Adam Brueggemann	OSBM
Molly Diggins	NC Sierra Club
Chris Fitzsimon	NC Policy Watch
Anita McNeil	DENR.
Kathy Hawkes	Progress Energy
Brian Wright	Conservation Council of NC
Joe White	NC Dept of State Treasurer



NORTH CAROLINA
Debt Affordability Advisory Committee

Debt Affordability Advisory Committee - Background

- Legislation adopted in 2004 created the Committee and directed it to:
  - Annually advise the Governor and the General Assembly of the estimated debt capacity of the State for the upcoming ten years.
  - Recommend other debt management policies it considers desirable and consistent with the sound management of the State's debt.

2

NORTH CAROLINA
Debt Affordability Advisory Committee

Members of the Debt Affordability Advisory Committee

Richard H. Moore State Treasurer	E. Norris Tolson Secretary of Revenue
David McCoy State Budget Officer	Leslie W. Merritt, Jr. State Auditor
Robert Powell State Controller	Christopher Henson Senate Appointee
James V. Porto House Appointee	

3

NORTH CAROLINA
Debt Affordability Advisory Committee

What is Debt Affordability?

- The amount of debt that may be prudently authorized and issued in a given period of time without negatively affecting the credit position of the issuer.
  - The amount of debt that is affordable ("capacity") is finite
  - Capacity can be measured and compared
  - Issuance beyond a prescribed level can erode credit ratings
  - A balance between capital needs and the ability to repay debt must be achieved

4

NORTH CAROLINA
Debt Affordability Advisory Committee

Why is Debt Affordability Important?

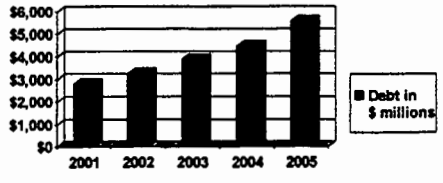
- Rating agencies view control of tax-supported debt as one of four key factors:
  - **Control of Debt Burden**
  - Economic Strength and Diversity
  - Fiscal Performance
  - Administrative Capabilities of Government

5

NORTH CAROLINA
Debt Affordability Advisory Committee

State Debt - Background

- The amount of net tax-supported debt has doubled in the last five years and totaled $5,578 million at 6/30/05



6

NORTH CAROLINA
Debt Affordability Advisory Committee

Outstanding Net Tax-Supported Debt by Type at June 30, 2005 (millions)

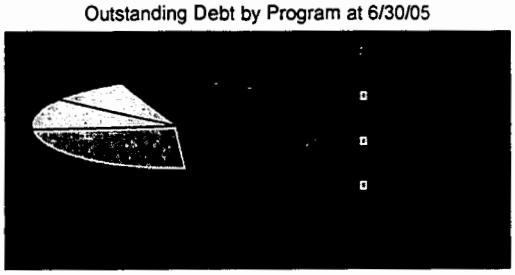
Total GO Bonds	$ 5,693
Less: Highway T.F.-Supported	(811)
Net Tax-Supported GO Bonds	$4,882
Special Indebtedness (COPs, Lease Revenue Bonds)	$740
Less: Health/Wellness T.F.-Supported	(60)
Plus: Installment purchase/leases	16
Net Tax-Supported Special Indebtedness	$696
Total Net Tax-Supported Debt	$5,578

7

NORTH CAROLINA
Debt Affordability Advisory Committee

State Debt -Background

Outstanding Debt by Program at 6/30/05



8

NORTH CAROLINA
Debt Affordability Advisory Committee

Authorized but Unissued Debt as of June 30, 2005

	General Obligation		Special Indebtedness	
Total Amount	$872.8 million		$297.1 million	
By Use (millions)	Univ.	$524.2	R&R	$ 175.0
	Comm. Coll.	$179.3	Psych. Hosp.	$ 48.9
	Clean Water	$169.3	Parks	$ 20.8
			Prisons	$ 52.4

9

NORTH CAROLINA
Debt Affordability Advisory Committee

Committee Recommended Guidelines

- Net tax-supported debt service as a % of general tax revenues*:
  Target: 4% Maximum: 4.75%
- Net tax-supported debt as a % of personal income: Target: 2.5% Maximum: 3.0%
- Ten-year payout ratio:
  Target: 55% Minimum: 50%
- Unreserved general fund balance as a % of tax revenues: Target: 5% Minimum: 3%

* Used to calculate debt capacity

10

NORTH CAROLINA
Debt Affordability Advisory Committee

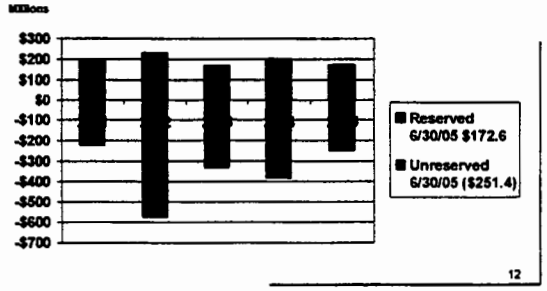
How Does the State Look Currently? Prospectively?

	Ratings	Debt to Personal Income	Debt per Capita	Debt Service as % Tax Rev.	10-Year Payout Ratio
6/30/05	**AAA/AAA/ Aa1**	**2.1%**	**$645**	**3.1%**	**50%**
6/30/06		2.2%	$700	3.6%	53%
6/30/07		2.0%	$684	3.8%	56%
6/30/08		1.8%	$646	3.8%	60%

11

NORTH CAROLINA
Debt Affordability Advisory Committee

How Does the State Look? Unreserved General Fund Balance



12

NORTH CAROLINA
Debt Affordability Advisory Committee

Debt Affordability Model

- Revenues
  - General tax revenues, investment earnings, misc. revenue adjusted for non-recurring items
  - Growth rate conservatively estimated @ 3%
- Liabilities
  - Debt Service from all net tax-supported debt, including authorized but unissued debt. Definition does not include Highway Fund debt, trust fund-supported or other self-supporting debt (but neither are the revenues associated with these liabilities included).
  - General structuring guidelines used for authorized but unissued debt (20-year maturity, etc.)

13

NORTH CAROLINA
Debt Affordability Advisory Committee

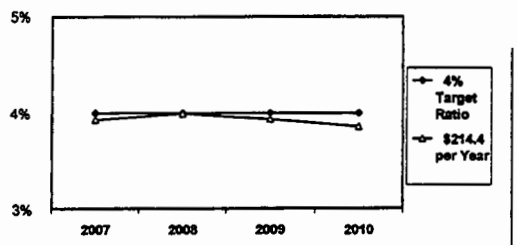
Debt Affordability Model – Results
4% Revenue Target (millions)

Fiscal Year	2006	2007	2008	2009	2010
Total Additional Capacity by Year	$374.5	$42.4	$277.8	$399.7	$330.8
Capacity Available Each and Every Year ("Smoothed")	$214.4	$214.4	$214.4	$214.4	$214.4

14

NORTH CAROLINA
Debt Affordability Advisory Committee

Smoothed Model Solution



15

NORTH CAROLINA
Debt Affordability Advisory Committee

Model Results - Sensitivity

Annual Change in Revenues	Change in Annual Debt Capacity
1% Change Every Year	$46 million
$100 million Change Every Year	$28 million

16

NORTH CAROLINA
Debt Affordability Advisory Committee

Highlights of the 2006 Debt Affordability Advisory Committee Report

- North Carolina's debt is manageable at current levels.
- The continued negative unreserved General Fund balance is a matter of concern that should be addressed.
- The State could prudently authorize $214.4 million of new tax-supported debt each year for the next 10 years.
- However, the Committee recommends a fiscally conservative approach in debt authorization until the level of unreserved General Fund balance shows additional improvement toward its stated target.

17

ATTACHMENT 4

State of North Carolina

Debt Affordability Study

February 1, 2006

Debt Affordability Advisory Committee

Department of State Treasurer
325 North Salisbury Street
Raleigh, NC 27603-1385
Phone: 919-508-5176

STATE OF NORTH CAROLINA
DEBT AFFORDABILITY ADVISORY COMMITTEE

February 1, 2006

To: Governor Michael Easley
Lieutenant Governor Beverly Perdue, President of the North Carolina Senate
Senator Marc Basnight, President Pro Tempore of the North Carolina Senate
Representative James Black, Speaker of the North Carolina House of Representatives
Representative Richard Morgan, Speaker Pro Tempore of the North Carolina House of Representatives
Members of the 2005 General Assembly through the Fiscal Research Division

Attached is the February 1, 2006 report of the Debt Affordability Advisory Committee submitted to you pursuant to North Carolina General Statute §142-101. The report was created to serve as a tool for sound debt management practices by the State of North Carolina.

The report provides the Governor and the General Assembly with a basis for assessing the impact of future debt issuance on the State's fiscal position and enables informed decision-making regarding both financing proposals and capital spending priorities. A secondary purpose of the report is to provide a methodology for measuring, monitoring and managing the State's debt levels, thereby protecting, and perhaps enhancing, North Carolina's bond ratings of AAA/Aa1/AAA.

The concept of Debt Affordability is widely regarded as an essential management tool. Fitch Ratings, one of the three major bond rating agencies, stated in a June 2005 report that "Quantifying the amount of debt the tax base can support enables an entity to determine the scope and limits of immediate, medium-term, and long-term capital plans."

The methodology used by the Committee to analyze the State's debt position incorporates historical and future trends in debt levels, peer group comparisons and provides recommendations within adopted guidelines. The Committee has also provided recommendations regarding other debt management related policies considered desirable and consistent with the sound management of the State's debt. Such recommendations were developed incorporating management practices consistent with those utilized by the most highly-rated states.

Respectfully submitted,

Richard H. Moore, State Treasurer
Chair, Debt Affordability Advisory Committee

Members of the Debt Affordability Advisory Committee:

Mr. Richard H. Moore, State Treasurer

Mr. E. Norris Tolson, Secretary of Revenue

Mr. David McCoy, State Budget Officer

Mr. Leslie W. Merritt, Jr., State Auditor

Mr. Robert Powell, State Controller

Mr. Christopher Henson, Senate Appointee

Mr. James V. Porto, House Appointee

Table of Contents

		Page
Executive Summary		1
Introduction and Background		3
Section I	The North Carolina Debt Affordability Model	5
Section II	Review of State Debt	7
Section III	Review of State Credit Ratings and Comparative Ratios	11
Section IV	Debt Guidelines and Model Results	13
Section V	Capital Project Prioritization and Pay-Go Funding	19
Appendix A	Revenues and Liabilities in the Model	20
Appendix B	10-Year Model Solution	23

Executive Summary

Studies of debt affordability are an essential management tool that help provide a comprehensive assessment of a government's capital needs. While control of tax-supported debt is a key factor affecting credit quality, it is only one of four major criteria used by rating agencies to determine the State's overall credit rating. North Carolina currently maintains a reasonable level of debt, however, the negative unreserved General Fund balance is an area of concern that warrants continued prudence in new debt authorization.

The 2004 General Assembly adopted legislation creating a Debt Affordability Advisory Committee (the "Committee") to annually advise the Governor and the General Assembly of the estimated debt capacity of the State for the upcoming ten fiscal years. The legislation also directs the Committee to recommend other debt management policies it considers desirable and consistent with the sound management of the State's debt. The Committee hereby presents its Study for 2006.

Recommended Guidelines and Amounts of Debt

The Committee has adopted the following target and outside guidelines to measure the recommended amount of debt that the State could prudently authorize and issue over the next 10 years:

- Net Tax-Supported Debt Service as a percentage of General Tax Revenues should be targeted at no more than 4% and not exceed 4.75%;
- Net Tax-Supported Debt as a percentage of Personal Income should be targeted at no more than 2.5% and not exceed 3.0%; and
- The amount of debt to be retired over the next ten years should be targeted at no less than 55% and not decline below 50%.

The Committee adopts the ratio of net tax-supported debt service as a percentage of revenues as the preferred ratio for the base calculations. It further determines that a measure of average annual debt capacity over a given time period provides a more useful management tool for policymakers than a measure that assumes that available debt capacity is utilized as soon as it is available.

A combination of renewed economic growth, corresponding revenue growth, slowed capital spending, the retirement of existing debt, continued low interest rates and a hiatus in new debt authorizations now enables the State to project modest available debt capacity for the immediate future. Specifically, the Committee finds that the State could annually authorize $214.4 million of new tax-supported debt over the model horizon and remain within its targeted ratio. However, there are compelling reasons to refrain from authorizing new state debt until the State makes more progress in other areas of fiscal management.

Table 1

Net Tax-Supported Debt Capacity using 4.0% debt service/revenues target ratio
(In Millions of dollars)

Fiscal Year	2006	2007	2008	2009	2010
Total Additional Debt Capacity per Year [1]	$374.5	$42.4	$277.8	$399.7	$330.8
Debt Capacity Available each and every Year	$214.4	$214.4	$214.4	$214.4	$214.4

[1] In Addition to that already Authorized but Unissued.

Other Recommendations

As directed by statute, the Committee submits the following additional recommendations which it finds desirable and consistent with the sound management of the State's debt:

General Fund Balance

The Committee finds that achieving structural budgetary balance and rebuilding the State's reserve funds is strong evidence of financial stability and flexibility. While the State has made progress in rebuilding reserves over the last year, the committee believes that more improvement is still necessary. The Committee adopts the following recommendation regarding the level of the State's unreserved General Fund Balance:

- As the State rebuilds its reserve funds, it should target an Unreserved General Fund Balance of 5% of tax revenues with a floor of 3%.

Capital Project Prioritization and the use of Pay-Go Funding

As we have advocated in the past, the Committee adopts additional recommendations regarding Capital Project Prioritization and the use of Pay-Go Funding.

Another prudent debt management practice to be considered is a method or practice that enables capital projects to be prioritized, often over multiple years. The Committee makes no recommendations as to any individual project or projects that should be given consideration for debt financing or how they should be prioritized through the budgetary and legislative processes. In order to efficiently utilize its debt capacity, however, the Committee recommends that the State develop criteria to prioritize capital projects as an additional tool to assist in the decision-making process for funding capital projects.

The use of "pay as you go" financing for capital projects reduces the amount of debt needed and increases the amount of budgetary flexibility in years when expenditure cuts are necessary. Governmental entities that allocate a percentage of the budget for capital needs or have a

mechanism in place to direct budgetary surpluses for this purpose are positively viewed. Institutionalizing the practice in the form of a recommendation is considered strong evidence of sound debt management.

Conclusions

Currently, all of the State's debt ratios are below median levels both for all fifty states and for a group of six states rated "triple A" by all three rating agencies. North Carolina's debt is considered low and is manageable at current levels. However, the continued negative unreserved General Fund balance is a matter of concern that should be addressed.

As the State continues to issue debt that was previously authorized, the absolute level of tax-supported debt is projected to increase and will stand at approximately $6.1 billion by the end of Fiscal Year 2006. On an absolute basis, debt service will increase through Fiscal Year 2008, declining thereafter. As a percentage of general tax revenues, debt service remains steady in Fiscal Years 2007 and 2008 at 3.8%, below its 4.0% target. The ratio of debt to personal income is projected to increase to 2.2% in Fiscal Year 2006. The ten-year payout ratio, which stood at 50.2% at June 30, 2005, is projected to improve substantially over the near term. Finally, the level of the unreserved general fund balance improved over the past year but has not yet achieved its targeted levels.

The State has entered into a period of renewed economic growth but it will take some time to bring unreserved general fund balances to levels consistent with those recommended by the Committee. Although the debt model now projects availability to support new debt, the Committee recommends a fiscally conservative approach until the level of unreserved general fund balance shows additional improvement toward its stated target.

Introduction and Background

In 2003, the North Carolina Department of State Treasurer prepared the first Debt Affordability Study to provide a methodology for measuring, monitoring and managing the State's debt capacity. In 2004, the General Assembly adopted legislation creating a Debt Affordability Advisory Committee to annually advise the Governor and the General Assembly on the estimated debt capacity of the State for the upcoming ten fiscal years.

Debt capacity is a limited and scarce resource. It should be used only after evaluating the expected results and foregone opportunities. The Study enables the State to structure its future debt issuances within existing and future resource constraints by providing a comparison of its current debt position to relevant industry standards, and by evaluating the impact of new debt issuances as well as changes in the economic climate on the State's debt position. The Study can thus be used to help develop and implement the State's capital budget. The Study is premised on the concept that resources as well as needs should guide the State's debt issuance program.

Although the State's level of authorized and unissued debt is manageable, establishing guidelines for future debt issuance and financial performance is a critical part of prudent debt management and can keep the debt burden from becoming excessive. The Committee recognizes that such guidelines must strike a balance between providing sufficient debt capacity to allow for the funding of essential capital projects and imposing sufficient discipline so that the State does not create a situation that results in a loss of future budgetary flexibility and could lead to a deteriorating credit position. Control of debt burden is one of the four key factors used by rating agencies' analysts in assessing credit quality. The other three are economic vitality and diversity, fiscal performance and flexibility and the administrative capabilities of government.

The Debt Affordability Committee has recommended both target and maximum (ceilings) debt ratios to use as guidelines to measure and control the State's debt burden. The adoption of such guidelines demonstrates that the State is committed to decreasing capital spending or finding new sources of revenue rather than imposing an excessive debt burden on future budgets.

Section I -The North Carolina Debt Affordability Model

The Debt Affordability Committee has adopted the measure of annual debt service arising from net tax-supported debt as a percentage of general tax revenues as its basis to evaluate the State's existing and projected debt burden. The Committee notes that policymakers control both variables that determine this ratio. By measuring what portion of the State's resources is committed to debt-related fixed costs, this ratio reflects the State's budgetary flexibility and ability to respond to economic downturns.

The Committee recognizes that there is a lag, sometimes of multiple years, between when debt is authorized and when it is issued. Consequently for 2006 the Committee has revised the manner in which the amount of debt affordability is presented, although there has been no change in how it is calculated. The revised annual measure smoothes the amount of debt the Sate can afford to prudently authorize each year for the 10-year period without exceeding its target ratios.

An added benefit of this change in presentation is that an annual figure provides policymakers with a framework within which to evaluate debt proposals in terms of the number of years of the State's overall debt capacity that will need to be dedicated to that proposal. For the inaugural presentation of this measure and in order to provide comparative information, available capacity is provided in the manner used in previous Debt Affordability Studies, and in the revised format. Section IV and Appendix B contain the detailed presentation of the model solutions.

Debt Used in the Model Calculation

The model uses a definition of net tax-supported debt that includes General Obligation Bonds, Special Indebtedness, Capital Lease Obligations, Installment/Equipment Leasing Obligations and any other such obligations that are owed to a third party over a predetermined schedule from General Fund Revenues. Obligations of Component Units, Highway Fund debt paid from Highway Fund revenues, non tax-supported special indebtedness paid from trust funds and other self-supporting or non-tax supported debt such as revenue bonds and short term tax anticipation notes are also excluded from the definition of net tax-supported debt.

Model Assumptions regarding Revenue Growth and Sensitivity Analysis

The Committee recognizes that it cannot predict the future level of interest rates or the pace of revenue growth and recognizes the sensitivity of the model results to such factors. Changes in revenue estimates have a particularly significant impact on the calculation of available debt capacity because of the multiplier effect of compounding growth over the ten-year period. Such projections are especially important when they reflect changing or different economic outlooks. The Committee has adopted a revenue growth assumption that applies a growth rate of 3.0% to base revenues but has reviewed sensitivity analysis based on differing revenue assumptions.

Debt Structuring Assumptions

The following assumptions were used in this year's debt affordability model calculations:

- The rate on existing Variable Rate Debt will average 4%
- The interest costs on the remaining GO and non-GO issues for FY 2006 will be 5.25 and 5.50%, respectively. Rates will average 6.00% and 6.50% for GO and Non-GO debt for the remainder of the authorized but unissued debt.
- GO debt will be structured with a 20-year maturity with an overall level principal payment profile after the first year.
- Non-GO debt will be structured with a 20-year maturity with an overall level debt service payment profile after the first year.
- The incremental model debt is assumed to be fixed-rate, 20-year maturity debt with an average interest cost of 6% and a level principal payment profile after the first year.

Section II – Review of State Debt

Outstanding Debt

The State issues two kinds of tax-supported debt: General Obligation Bonds and various kinds of "Special Indebtedness", which are also known as Appropriation-Supported Debt. General obligation bonds are secured by the full faith, credit and taxing power of the State. The payments on all other kinds of long-term debt, including Certificates of Participation ("COPs"), lease-purchase revenue bonds, capital lease obligations and equipment installment purchase contracts are subject to appropriation by the General Assembly. Some appropriation-supported debt is also secured by a lien on facilities or equipment.

Debt that is determined to be self-supporting or supported by non-general fund tax revenues does not constitute net tax-supported debt, but is included in the definition of "gross" tax-supported debt used by some analysts.

The State's outstanding gross and net tax-supported debt positions as of June 30, 2005 are shown below.

Chart 1

State of North Carolina Outstanding Net Tax-Supported Debt

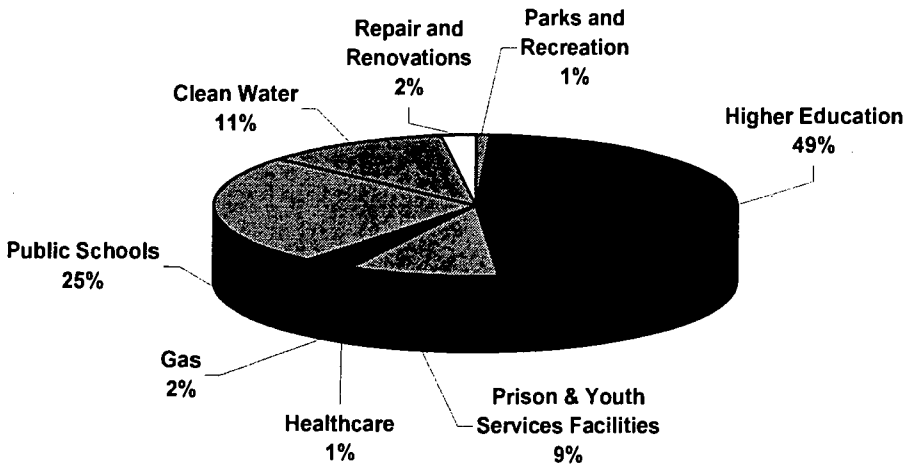
	June 30, 2005
Total General Obligation Bonds	$ 5,693,081,426
Less: Self-Supporting payable from Highway Trust Fund	811,430,000
Net Tax-Supported General Obligation Bonds	$ 4,881,651,426
Certificates of Participation / Lease Revenue Bonds	$ 740,215,000
Less: Self-Supporting payable from Health & Wellness Trust Fund [1]	59,865,150
Net Tax-Supported Certificates of Participation / Lease Revenue Bonds	$ 680,349,850
Plus: Installment Purchase Contracts / Equipment & Capital Leases [2]	16,023,933
Net Appropriation-Supported Indebtedness	$ 696,373,783
Gross Tax-Supported Debt	$ 6,449,320,369
Less: Self - Supporting / Trust Fund Debt	871,296,160
Net Tax-Supported Debt	$ 5,578,025,209

[1] HB 1264 Debt Supported by the Clean Water, Natural Heritage and Parks and Recreation Trust Funds is not considered to be self-supporting because these Trust Funds flow through the General Fund.
[2] Source: Office of State Budget & Management pursuant to G.S. 147-33.72H.

The following chart illustrates the uses for which the State has issued net tax-supported debt calculated on the amount outstanding. The State has used the proceeds of its debt programs for many purposes with the two largest being to provide facilities and infrastructure for higher education (49%) and public schools (25%).

Chart 2

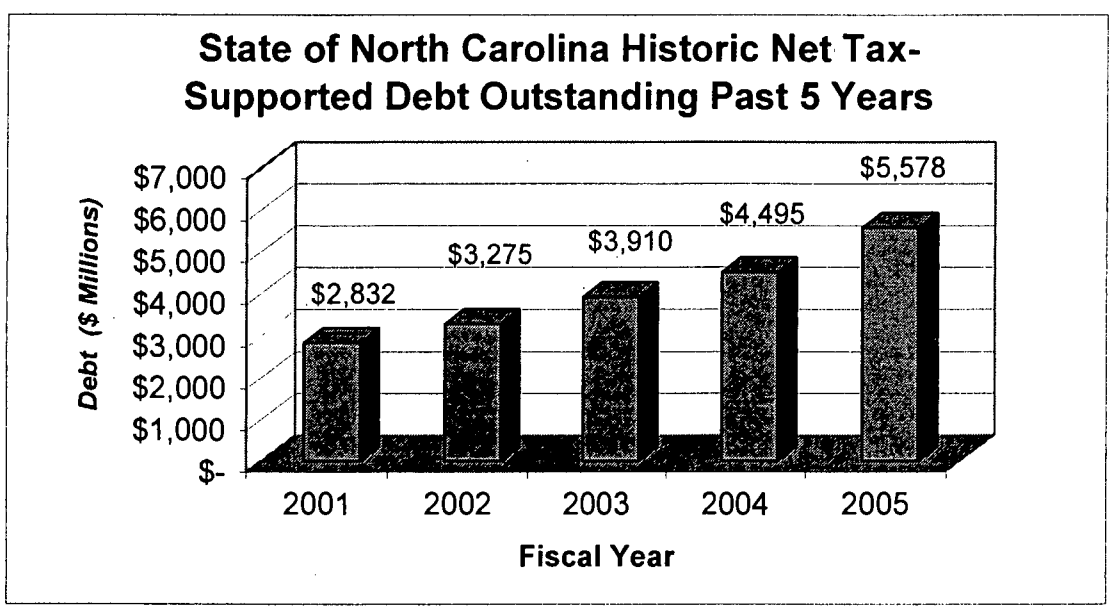
North Carolina Outstanding Net Tax-Supported Debt by Program as of June 30, 2005



Growth in State Debt

Net tax-supported debt has shown significant growth over the last five years as the State has used debt financing to address the requirements of a growing population for education and other capital needs. Such debt grew by an average annual rate of 19.58% during the last five years, increasing from $2.8 billion at June 30, 2001 to $5.6 billion at June 30, 2005. Chart 3 below illustrates the growth in total State net tax-supported debt outstanding over the last five years.

Chart 3



Authorized but Unissued Debt

The State issues debt on a cash flow basis. Bond issues are timed to provide funds as they are actually needed. Therefore there is typically a lag between when debt is authorized and when it is actually issued. As of the end of Fiscal Year 2005, the amount of such authorized but unissued net tax-supported debt totaled approximately $1.2 billion, including $704 million Higher Education Bonds, $169 million Clean Water Bonds, and $297 million of Certificates of Participation to fund various other projects. For planning purposes, the State anticipates issuance of all currently authorized but unissued debt by the end of Fiscal Year 2008.

Chart 4 below shows the projected pace of net tax-supported debt issuance over the next three years. As discussed previously, Highway debt and other special indebtedness payable from non-tax supported revenue is excluded.

Chart 4

Currently Authorized but Unissued Net Tax-Supported Debt
Plan of Issuance
(Dollars in Millions)

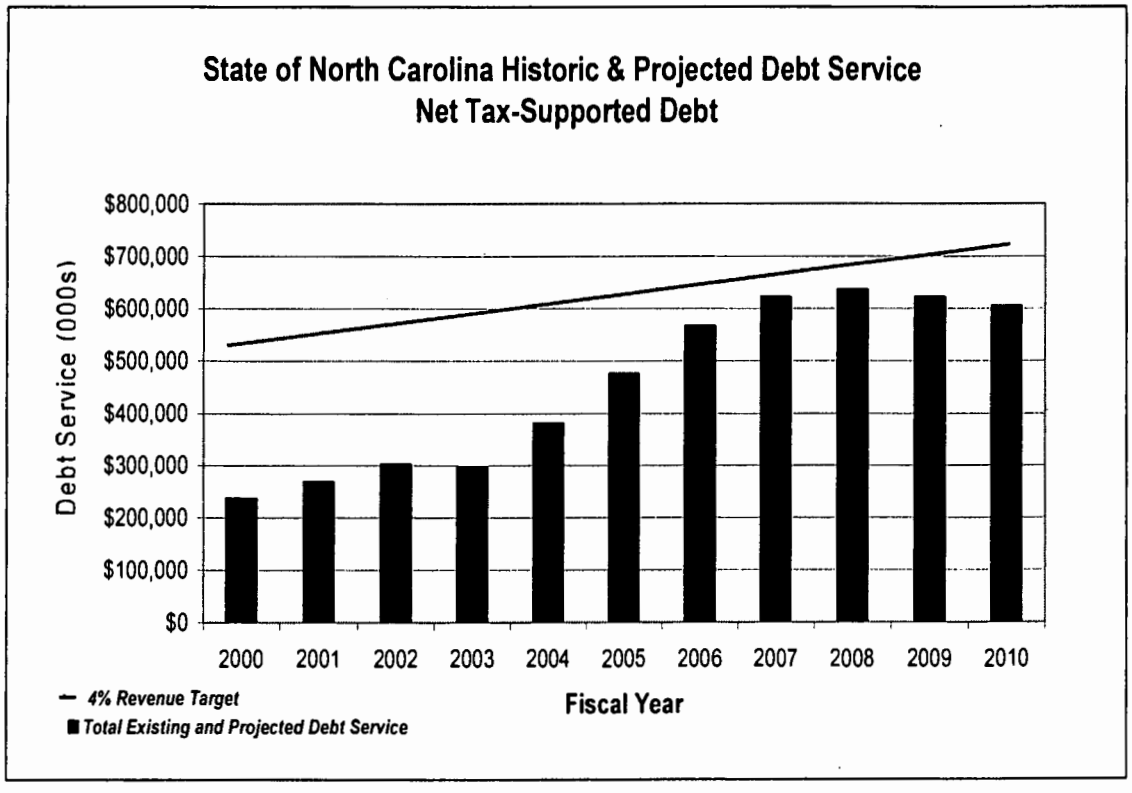
	General Obligation				*Special Indebtedness*					
	University Projects	Community Colleges	Clean Water	Sub Total	Repair & Renovation	Psychiatric Hospital	Parks	Prisons	Sub Total	Total
Authorized & Unissued as of June 30, 2005	$524.20	$179.30	$169.30	$872.80	$175.00	$48.90	$20.80	$52.40	$297.10	$1,169.90
Assumed Issued										
FY 2006	524.2	70.0	50.0	$644.20	75.00	48.90	20.80	52.40	$197.10	$841.30
FY 2007	0.0	109.3	50.0	$159.30	100.00				$100.00	$259.30
FY 2008	0.0	0.0	69.3	$69.30					$0.00	$69.30
FY 2009	0.0	0.0	0.0	$0.00					$0.00	$0.00
FY 2010	0.0	0.0	0.0	$0.00					$0.00	$0.00
Total:	$524.2	$179.3	$169.3	$872.8	$175.0	$48.9	$20.8	$52.4	$297.1	$1,169.9

Debt Service

The amount the State spends on debt service each year has risen, both on an absolute basis and as a percentage of general tax revenues. This trend is expected to continue for the near future, as the absolute amount of outstanding debt also increases. Both the State's historic and projected debt service, incorporating the debt service on all authorized but unissued amounts, is illustrated below in Chart 5.

The scheduled retirement of debt is an important source of future debt capacity and its impact is incorporated into the affordability analysis presented in Section IV and Appendix B.

Chart 5



Section III - Review of State Credit Ratings and Comparative Ratios

Credit ratings are the rating agencies' assessment of a governmental entity's ability and willingness to repay debt on a timely basis. Credit ratings are an important factor in the public credit markets and can influence interest rates a borrower must pay.

Chart 6

North Carolina Credit Rating Matrix

State of North Carolina

General Obligation Bond Credit Ratings as of June 30, 2005

Rating Agency	*Rating*	*Outlook*
Fitch Ratings	AAA	Not Applicable
Moody's Investors Service	Aa1	Positive
Standard & Poor's Rating Services	AAA	Stable

The State's general obligation bonds are rated AAA by Fitch Ratings ("Fitch"), and AAA with a "stable" outlook by Standard & Poor's Ratings Services ("S&P"), the highest ratings attainable. Moody's Investors Service ("Moody's") rates the State's general obligation bonds at Aa1 with a "positive outlook", one half step below their highest rating of Aaa. All three agencies base their prime ratings on the State's strong, diverse economic base, its sound financial management and low debt levels.

In the aftermath of the challenges posed by the recent national recession and decline or slowdown in overall state revenue growth, increasing emphasis has been placed on achieving structural balance and rebuilding reserves. Overall, the State, with its conservative approach to its financial operations, remains in a positive credit position as it now enjoys an expanding and more diversified economy. In particular, the rating agencies cite the State's effective management of and swift response to its budget stresses and the adoption of the first formal debt affordability model in 2003 as positive credit factors.

Comparison of Debt Ratios to Selected Medians

A comparison to national and peer group medians is helpful because absolute values are more useful with a basis for comparison. In May 2005, Moody's published the "2005 State Debt Medians" report with its annual analysis of state debt ratios.

How North Carolina compares with its peers for the three debt ratios evaluated is presented below. The peer group, states rated "triple A" by all three credit rating agencies, includes the states of Delaware, Georgia, Maryland, Missouri, Utah and Virginia. The debt to personal income and debt per capita ratios are taken from Moody's "2005 State Debt Medians" report while the debt service to revenue ratio from Moody's uses 2003 data, the last available period. As shown in Chart 7, the State's debt ratios are below the median levels for the group of triple-A states and the State of North Carolina compares very favorably with its peers.

Chart 7

North Carolina Debt Ratios
versus Actual Ratios for Other Highly Rated States *

State	Ratings (Fitch/S&P/Moody's)	2005 Debt to Personal Income	2005 Debt per Capita	2003 Debt Service as % of Tax Revenue
Delaware	AAA/AAA/Aaa	5.5%	$1,865	5.0%
Georgia	AAA/AAA/Aaa	2.8%	803	5.9%
Maryland	AAA/AAA/Aaa	2.9%	1,064	4.1%
Missouri	AAA/AAA/Aaa	1.5%	449	2.9%
Utah	AAA/AAA/Aaa	3.2%	792	5.3%
Virginia	AAA/AAA/Aaa	1.8%	589	3.6%
	Peer Group Median (as of June 30, 2005)	2.9%	$798	4.6%
North Carolina (as of 6/30/05)	AAA/AAA/Aa1	2.1%	$645	3.1%
	Ratio to Median	0.74	0.81	68.3%
North Carolina (Projections for 2006)	AAA/AAA/Aa1	2.2%	$700	3.6%
(Projections for 2007)	AAA/AAA/Aa1	2.0%	$684	3.8%
(Projections for 2008)	AAA/AAA/Aa1	1.8%	$646	3.8%

* Source: Moody's 2005 State Debt Medians

SECTION IV – Guidelines and Model Results

Net Tax-Supported Debt Service as a Percentage of General Tax Revenues

The Committee adopted the following target and ceiling guidelines as the preferred measure used to determine the amount of net tax-supported debt that can be prudently authorized by the State:

- Net Tax-Supported Debt Service as a percentage of General Tax Revenues should be targeted at no more than 4% and not exceed 4.75%.

The Committee has adopted a revision in the manner that the amount of debt affordability is presented. Beginning with this, the 2006 report, the Committee recognizes that an annual measure of affordability that assumes that all additional debt that the State has the capacity to authorize is, indeed, authorized or issued in the upcoming fiscal year is not grounded in current practice. There is often a time lag, sometimes of multiple years, between when debt is authorized and when it is issued. Consequently the Committee has adopted a revision in the manner that debt affordability is presented. The revised annual measure smoothes the amount of debt the State can afford to prudently authorize each and every year for the model horizon without exceeding its target ratios. In practice, the limit imposed by the year of the least capacity over the model horizon (2008) drives the smoothing.

4.0% Target Ratio/Debt Service Impact

Illustrated below the first line is the actual amount of new tax-supported debt that could be authorized and issued by year staying within the 4.0% target ratio. The second line shows this new debt amount smoothed over every year of the planning horizon.

One important source of capacity is the retirement of existing debt. As the State retires debt, the amount becomes a resource of future capacity. The amount of debt to be retired totals nearly $1.7 billion through 2010 and is netted from Total Debt Capacity per year to illustrate the impact versus that of revenue growth.

Finally, the debt service arising from the presumed issuance of $214.4 million of new debt annually is illustrated.

Table 2

Net Tax-Supported Debt Capacity using 4.0% debt service/revenues target ratio
(In Millions of dollars)

Fiscal Year	2006	2007	2008	2009	2010
Total Additional Debt Capacity per Year [1]	$374.5	$42.4	$277.8	$399.7	$330.8
Debt Capacity Available each and every Year	214.4	214.4	214.4	214.4	214.4

[1] In Addition to that already Authorized but Unissued.

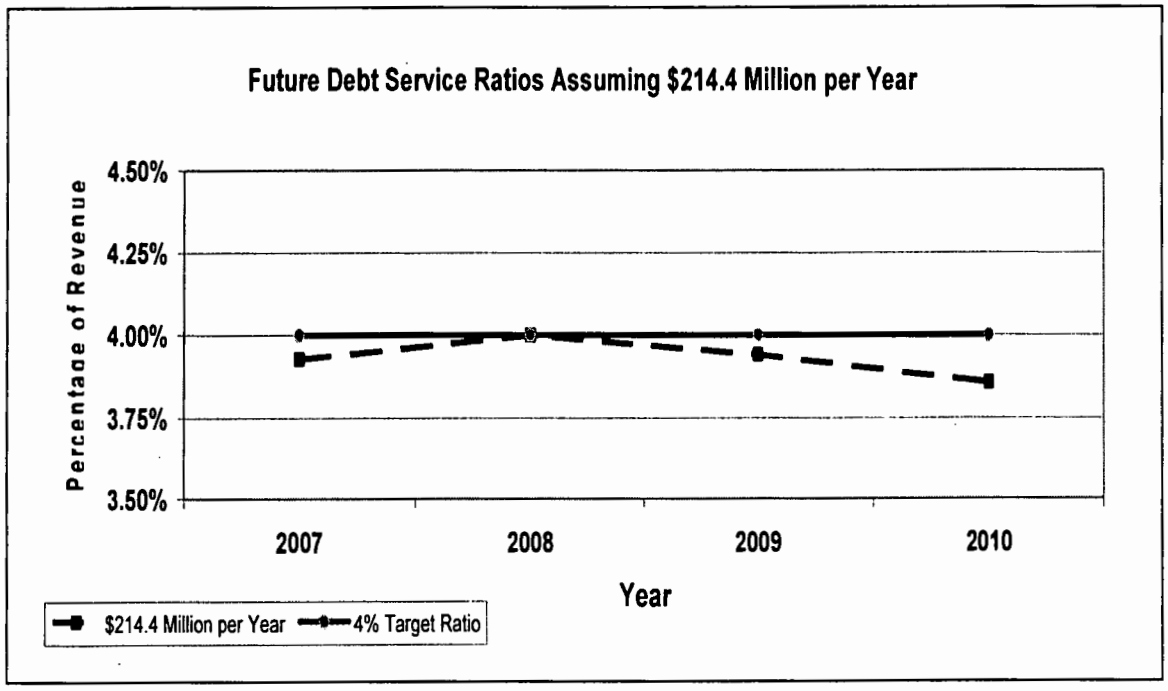
Table 3

Retirement of Outstanding Debt Compared to the $214.4 Million Annual Debt Capacity
(In Millions of Dollars)

Fiscal Year	2006	2007	2008	2009	2010
Retirement of Outstanding Debt	302.8	326.5	339.4	339.2	341.3
Debt Capacity in Excess of Retirement of Debt	(88.4)	(112.1)	(125.0)	(124.8)	(126.9)
Additional Debt Service on Debt Capacity ($214.4 million / year)	0.0	15.7	32.7	56.6	79.9

A chart showing the ratio of debt service to revenues that results assuming the annual $214.4 million is issued is shown below in Chart 8.

Chart 8



Sensitivity Analysis on 4% Target Solution

The model results are highly sensitive to changes in revenue assumptions. Specifically, a one percent change, either up or down, in general tax revenues in each and every year of the model solution horizon will change the amount of annual debt capacity by an average of approximately $46 million. The effect of a variation in revenues of $100 million per year will impact the amount of new debt that may be prudently issued by an average of approximately $28 million per year.

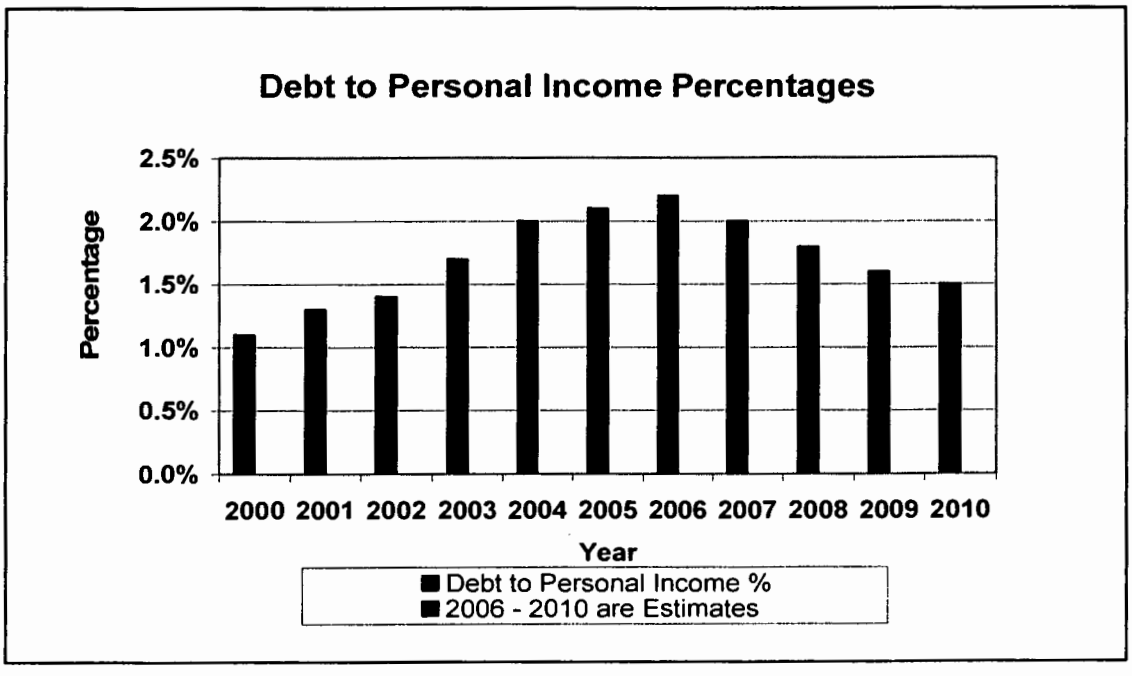
Net Tax-Supported Debt to Personal Income

The Committee has also established guidelines for evaluating the State's debt burden as a measure of personal income, as follows:

- Net Tax-supported Debt as a percentage of Personal Income should be targeted at no more than 2.5% and not exceed 3.0%.

Chart 9 below, shows that the amount of tax-supported debt as a percentage of personal income has been rising and will peak in Fiscal Year 2006 incorporating all currently authorized but unissued debt.

Chart 9



Source: Population and Personal Income statistics provided by "Moody's Economy.com" courtesy of the North Carolina General Assembly Fiscal Research Division.

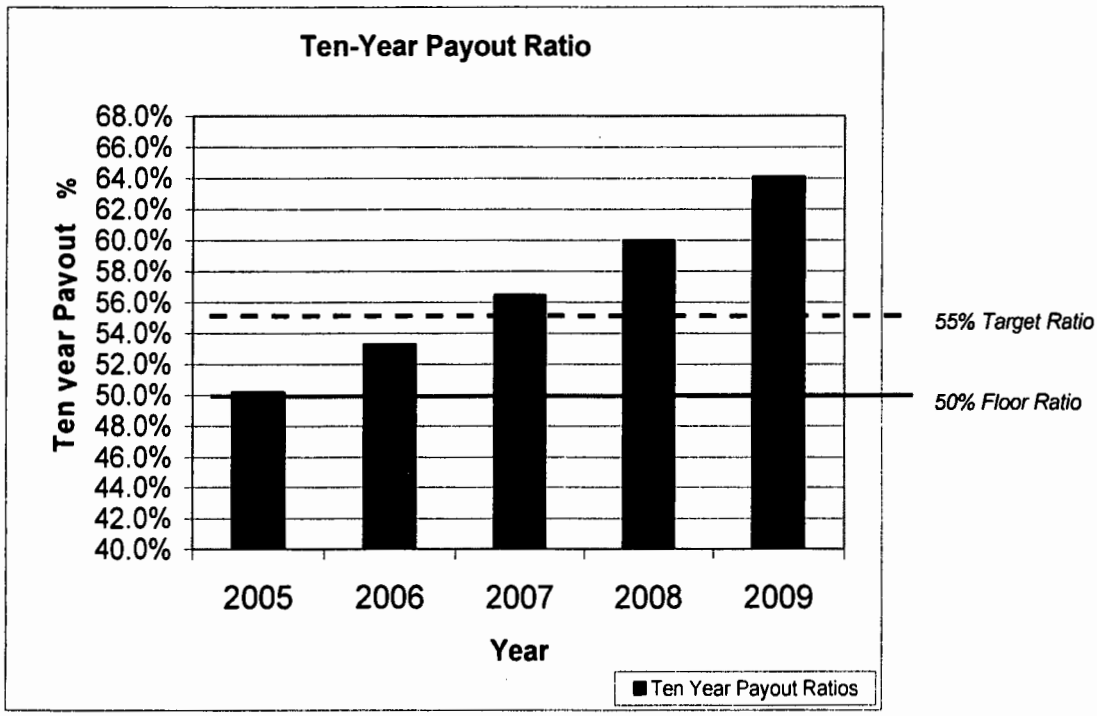
Ten-Year Payout Ratio

A short period of time within which a State retires outstanding debt obligations is considered a positive credit attribute. The Committee has adopted the following guideline regarding the payment structure of the State's debt:

- The amount of debt to be retired over the next ten years should be targeted at no less than 55% and should not decline below 50%.

Chart 10 below illustrates that the State's payout ratio will reach its targeted levels in Fiscal Year 2007 and beyond.

Chart 10



Level of Unreserved Fund Balance

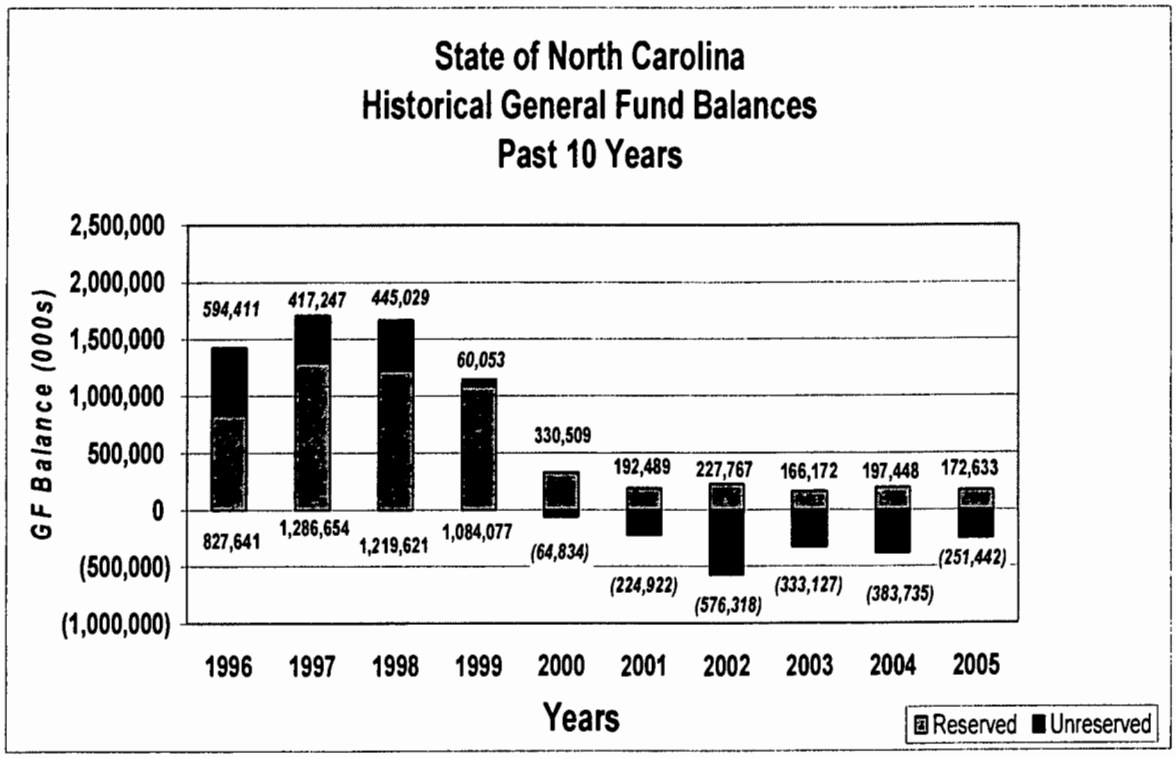
As discussed previously, the rating agencies place emphasis on budgetary reserves. In a report dated December 22, 2005, Standard & Poor's stated that "...reserves are critical to managing economic cycles and providing substantial flexibility to manage the budget and capital requirements of a government." The Committee adopted the following guidelines regarding the level of the State's unreserved General Fund balance:

- As the State rebuilds its reserve funds, it should target an Unreserved General Fund Balance of 5% of tax revenues with a floor of 3%.

The State has made progress over the last year, improving the level of unreserved general fund balances by approximately $132 million, although the level remains a negative $251 million.

Chart 11 depicts the State's historic unreserved fund balance as a percentage of general fund tax revenues over the last ten years.

Chart 11


State of North Carolina
Historical General Fund Balances
Past 10 Years
GF Balance (000s)
2,500,000
2,000,000
1,500,000
1,000,000
500,000
0
(500,000)
(1,000,000)
594,411
417,247
445,029
60,053
330,509
192,489
227,767
166,172
197,448
172,633
827,641
1,286,654
1,219,621
1,084,077
(64,834)
(224,922)
(576,318)
(333,127)
(383,735)
(251,442)
1996
1997
1998
1999
2000
2001
2002
2003
2004
2005
Years
Reserved
Unreserved

Section V - Capital Project Prioritization and Pay-Go Funding

In previous years the Committee has provided discussion regarding the prioritization of capital projects and the use of Pay-go funding. That discussion is reiterated below:

As the demand for financing capital projects through the issuance of bonds exceeds the amount of debt capacity projected under the debt affordability study, the Committee again recommends that the State adopt a prioritization program for its capital projects. Adopting a prioritization program allows the State to create a planning tool, which will efficiently allocate the scarce resource of debt capacity.

There are several advantages to the creation of such a program. A prioritization model will enable the State to allocate available debt capacity over a period of years, rather than just one year. It is possible that projects with low priorities will examine alternative ways of financing, thus reducing the strain on the general obligation program. Investors will have a better idea as to when the State will come to market with bonds, thus improving the quality of their investment timing decisions. Last, but not least, a prioritization plan will have a positive impact on the rating agencies' assessments of the State's credit. Rating analysts will be able to accurately predict and review the State's capital needs. Also, the prioritization program will serve as an indicator of the State's capital needs, which is another factor in the evaluation of the State's long-term fiscal outlook.

Possible criteria to consider as part of the prioritization program include: amount of bond proceeds required, useful life of the project, economic benefit of the project and revenues generated from the project.

Another consideration that affects future debt service capacity is the use of "pay-as-you-go" ("PAYGO") funding of capital projects. By using current revenues to fund a portion of a capital plan, the State can reduce future debt service and retain debt capacity. For example, if the State funded a capital project with $50 million as PAYGO rather than financing it through a $50 million, 20-year bond issue, the State would save approximately $20.9 million in total interest payments over the life of the issue assuming current market conditions. Although rating agencies do not set specific guidelines for determining an acceptable level of PAYGO, the consensus is that the use of current revenues for capital projects reduces future debt obligations and is therefore a positive credit factor.

Appendix A
Revenues and Liabilities in the North Carolina Debt Affordability Model

Revenues

The model uses general tax revenues adjusted for one-time or non-recurring items plus certain other revenue items deemed available to service debt from the most recently available *Comprehensive Annual Financial Report.* The following items are included:

General Fund Tax Revenues

- Individual Income Tax
- Corporate Income Tax
- Sales & Use Tax
- Franchise Tax
- Insurance Tax
- Beverage Tax
- Inheritance Tax
- Other Taxes

Other General Fund Revenue Items

- Investment Income
- Miscellaneous Revenues

Revenue Growth and other Assumptions

Changes to revenue estimates have a significant impact on the calculation of available debt capacity because of the multiplier effect of compounding growth over the ten-year period. And such projections are especially important when they reflect changing or different economic outlooks.

Base revenues are assumed to grow at a rate of 3% annually through the forecast period (2015). The Committee believes this assumption to be prudent. Sensitivity analysis has been provided for those who believe that these assumptions are either overly conservative or aggressive.

The revenue estimates are also adjusted to incorporate the effect of any changes dictated in current law. Therefore the expiration of the ½ cent State Sales Tax and 8.25% income tax rate has been incorporated. Again, the sensitivity analysis may provide a tool for those who wish to evaluate different assumptions.

Liabilities

To calculate net tax-supported debt, credit analysts take into account all debt supported by general tax revenues. This debt position shows the amount of indebtedness serviced from an issuer's General Fund; that is, it reflects the debt service payments made directly from tax revenues and is known as net tax-supported debt. Although a consensus appears to exist among credit analysts as to the appropriateness of using net tax-supported debt as the standard for determining an issuer's debt position, there is less unanimity about the precise calculation. The Committee has determined to follow the approach of Moody's Investor Service and exclude self-supporting debt from its calculations.

The model uses a definition of net tax-supported debt that includes General Obligation Bonds, Special Indebtedness, Capital Lease Obligations, and any other such obligations that are owed to a third party over a predetermined schedule from General Fund Revenues. Obligations of Component Units, Highway Fund debt which is paid from Highway Fund revenues, non tax-supported special indebtedness which is paid from trust funds and other self-supporting debt is excluded. Short-term Tax Anticipation Notes and Energy Performance Contract Financing Liabilities are also excluded.

The model includes the actual debt service from all outstanding net tax-supported debt and for all authorized, but currently unissued tax-supported debt if such issuance does not require further action on the part of the General Assembly. The following is a list of those liabilities that are included in the model (outstanding amounts as of June 30, 2005):

- General Obligation Bonds supported by General Fund Tax Revenue - $4,881,661,426.
- Appropriation-Supported Indebtedness (collectively "Special Indebtedness")
    - Certificates of Participation supported by General Funds $415,304,850. Also including
        - Chapter 1264 projects supported by the Clean Water, Natural Heritage and Parks and Recreation Trust Funds where funds flow through the General Fund - $22,719,610.
    - Capital Leases - $330,000.
    - Installment Purchase Contracts/Equipment lease obligations determined pursuant to G.S. 147-33.72H - $16,023,933.
    - Lease Revenue or Lease-Purchase Revenue Bonds - $265,045,000.

Liabilities not included in the model (outstanding amounts as of June 30, 2005):

- Highway Construction General Obligation Debt supported by separate taxes - $811,430,000.
- Appropriation-Supported Indebtedness (collectively "Special Indebtedness")
    - Certificates of Participation supported by non-General Funds including
        - Chapter 1264 projects supported by the Health and Wellness/Tobacco Trust Funds - $59,865,150 (issued), $359,126,036 (authorized but unissued).
- Specifically authorized Revenue Bonds (Butner Water and Sewer Revenue Bonds) - $9,070,000.
- Short Term Tax Anticipation Notes (not supported by General Tax Revenue) - $0.

- Obligations of the University of North Carolina System, the North Carolina Housing Finance Agency or other Component Units - $16,476,404,656.

- Energy Performance Contract obligations where such obligations are guaranteed and approved pursuant to G.S. 142-64 and not supported by separate appropriations - $0.

Note: Although these liabilities do not constitute tax-supported debt, they are obligations of The State of North Carolina or various component units, and The State's General Fund, although not legally obligated to, could be called upon to service these obligations if necessary.

Debt Structuring Assumptions

The following assumptions were used in this year's debt affordability model calculations:

- The rate on existing Variable Rate Debt will average 4%
- The interest costs on the remaining GO and non-GO issues for FY 2006 will be 5.25 and 5.50%, respectively. Rates will average 6.00% and 6.50% for GO and Non-GO debt for the remainder of the authorized but unissued debt.
- GO debt will be structured with a 20-year maturity with an overall level principal payment profile after the first year.
- Non-GO debt will be structured with a 20-year maturity with an overall level debt service payment profile after the first year.
- The incremental model debt is assumed to be fixed-rate, 20-year maturity debt with an average interest cost of 6% and a level principal payment profile after the first year.

Appendix B
10-Year Model Solution

4% Debt Service/Revenue Target

Table 4

Net Tax-Supported Debt Capacity using 4.0% debt service/revenues target ratio
(In Millions of dollars)

Fiscal Year	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Total Additional Debt Capacity per Year [1]	$374.5	$42.4	$277.8	$399.7	$330.8	$386.4	$365.4	$430.7	$422.2	$445.3
Debt Capacity Available each and every Year	214.4	214.4	214.4	214.4	214.4	214.4	214.4	214.4	214.4	214.4

[1] In Addition to that already Authorized but Unissued.

Table 5

Retirement of Outstanding Debt Compared to the $214.4 Million Annual Debt Capacity
(In Millions of Dollars)

Fiscal Year	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Retirement of Outstanding Debt	$302.8	$326.5	$339.4	$339.2	$341.3	$342.3	$344.3	$347.3	$347.7	$348.1
Debt Capacity in Excess of Retirement of Debt	(88.4)	(112.1)	(125.0)	(124.8)	(126.9)	(127.9)	(129.9)	(132.9)	(133.3)	(133.7)
Additional Debt Service on Debt Capacity ($214 million / year)	0.0	15.7	32.7	56.6	79.9	102.5	124.3	145.5	166.0	185.8

4.75% Debt Service/Revenue Target

Table 6

Net Tax-Supported Debt Capacity using 4.75% debt service/revenues target ratio
(In Millions of dollars)

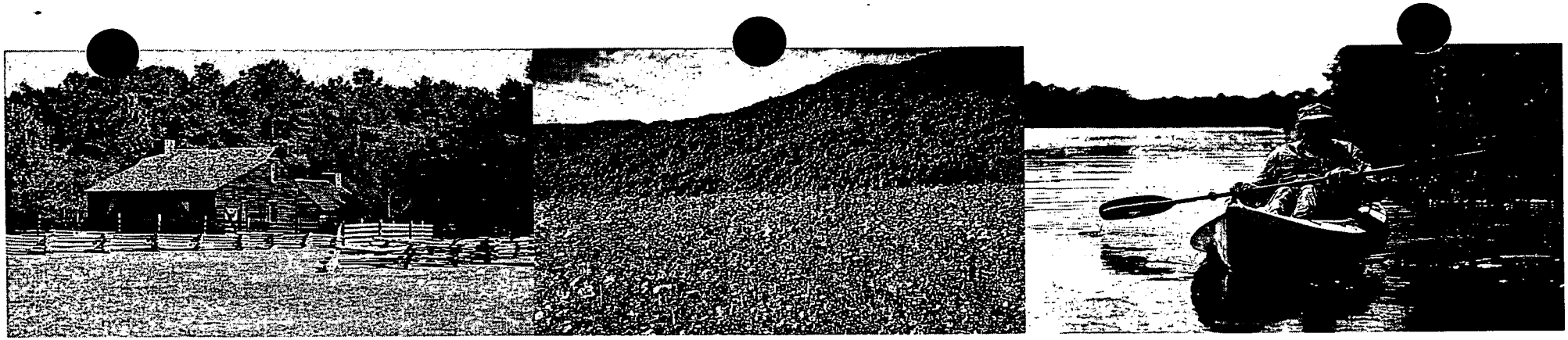
Fiscal Year	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Total Additional Debt Capacity per Year [1]	$2,016.8	$78.2	$299.9	$105.9	$165.4	$593.3	$372.1	$552.8	$485.8	$548.5
Debt Capacity Available each and every Year	525.9	525.9	525.9	525.9	525.9	525.9	525.9	525.9	525.9	525.9

[1] In Addition to that already Authorized but Unissued.

Table 7

Retirement of Outstanding Debt Compared to the $525.9 Million Annual Debt Capacity
(In Millions of Dollars)

Fiscal Year	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Retirement of Outstanding Debt	$302.8	$326.5	$339.4	$339.2	$341.3	$342.3	$344.3	$347.3	$347.7	$348.1
Debt Capacity in Excess of Retirement of Debt	223.1	199.4	186.5	186.7	184.6	183.6	181.6	178.6	178.2	177.8
Additional Debt Service on Debt Capacity ($525.9 million / year)	0.0	39.0	78.7	123.3	174.6	232.7	289.0	343.5	396.3	447.3

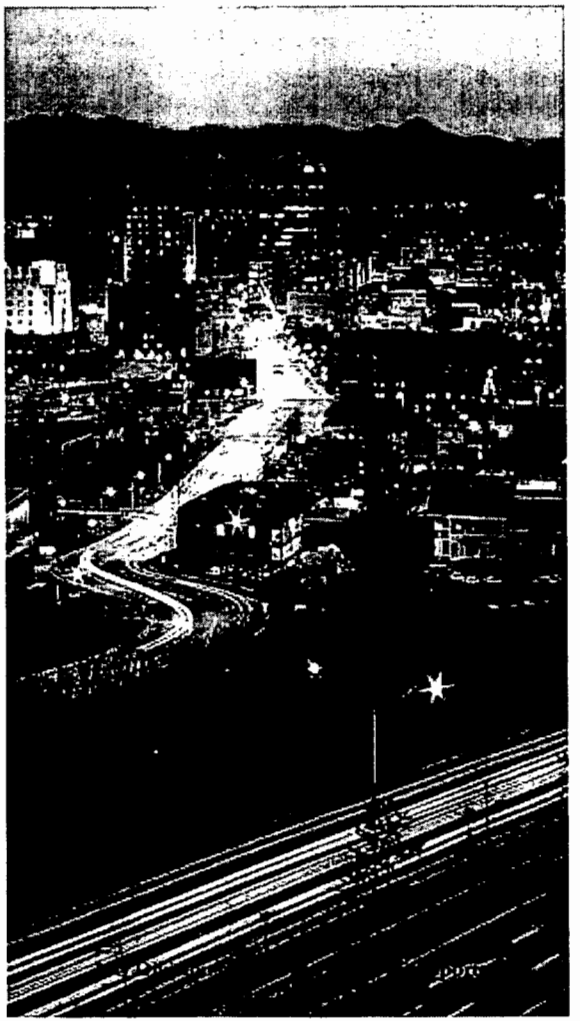


Land *for* Tomorrow

ATTACHMENT 5

Why Act Now?

- By 2030, our population is expected to surpass New Jersey, Michigan and Ohio
- 100,000 acres of farm & forest land developed each year
- 2,600 miles of streams do not meet water quality standards established by NC Division of Water Quality



Significant Land Ownership Shifts

- Tobacco Farmers
- Power Companies
- Timber Companies

Escalating Land Prices

Five-Year Protection Goals

- **740,000 acres of land across North Carolina**

including

- **Protect water in 6,000 miles of rivers and streams**

plus

- **Build trails and facilities for state and local parks**

plus

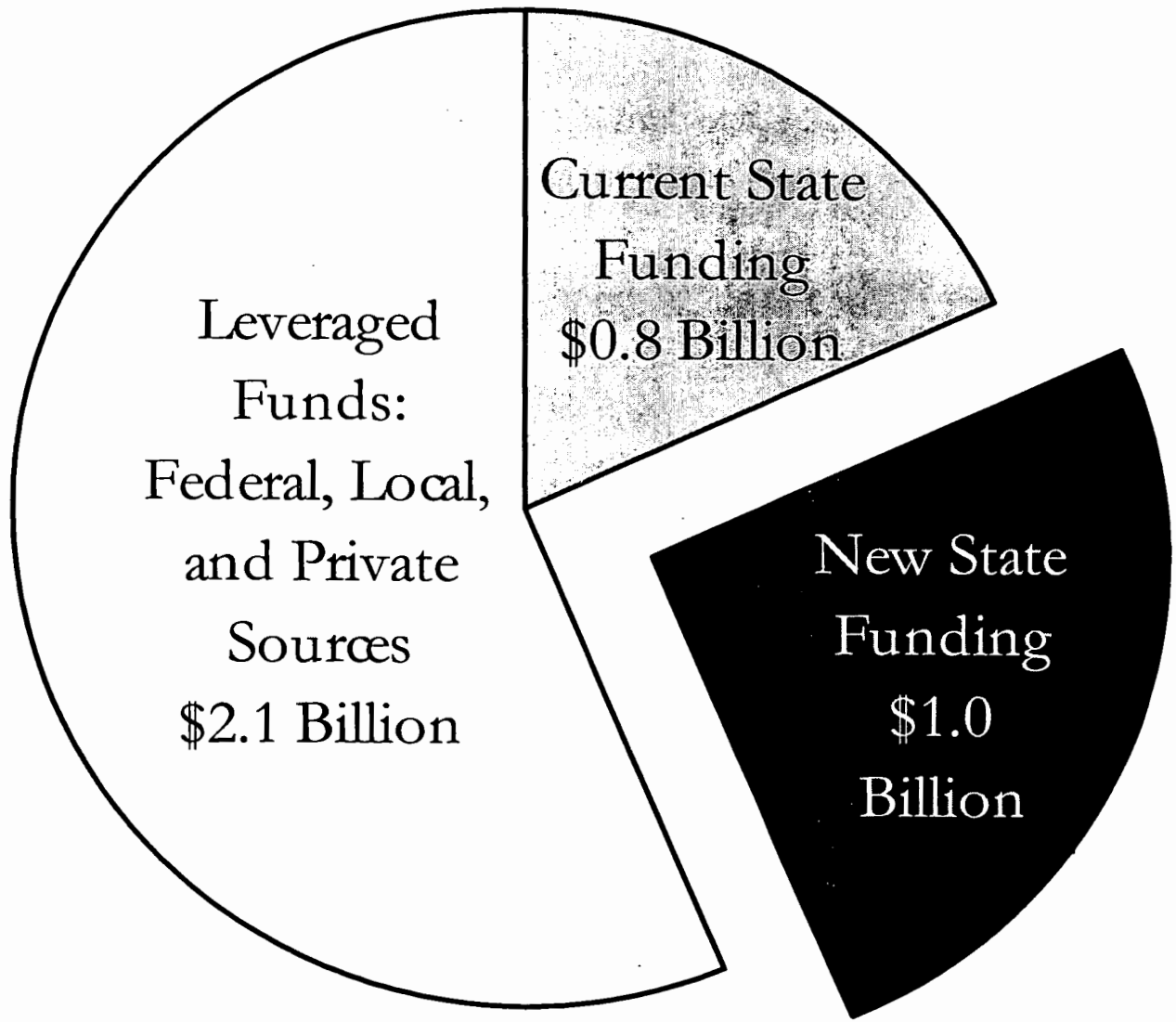
- **Restore 350 historic landmarks in public use**

plus

- **Invest in job creation and community development activities that conserve land and historic places**

How much will it take?

Overall Five-Year Funding Need: $3.9 Billion



Build on Current Foundation

Invest more in successful programs

- **Conservation trust funds** ($167 million (84%))
  - Clean Water Management Trust Fund
  - Natural Heritage Trust Fund
  - Parks and Recreation Trust Fund
  - Farmland Preservation Trust Fund
- **Landing Jobs** ($30 million (15%))
- **One North Carolina *Naturally*** ($ 3 million (1%))

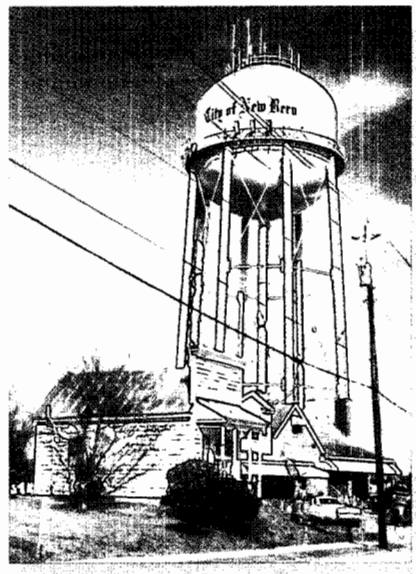
If We're Successful....

Our children and grandchildren will still think of North Carolina as the "goodliest land" with:

- Clean water and air
- Sustainable jobs and economic growth
- Farming and timbering
- Places of historic and ecological value
- Places to enjoy the beauty of North Carolina, to exercise, to hunt and fish

ATTACHMENT 6

Conclusions & Recommendations



WATER2030 INITIATIVE

The Rural Center

THE NORTH CAROLINA WATER 2030 INITIATIVE

Preparing North Carolina's leaders and citizens to make sound decisions about our water future

Water 2030 is a statewide water resources initiative launched in March 2004 to ensure that North Carolinians in every part of the state have access to ample supplies of clean water. The initiative has produced extensive information on the state's public infrastructure and long-term water supply and is engaging leaders and citizens in discussions about North Carolina's water future.

Background

In the coming years, North Carolinians will be called upon to make unprecedented decisions about water resources. Although the state has long been considered water rich, evidence is mounting that the state's water resources are under stress. In some areas of the Coastal Plain, where aquifers supply most of the water for residential and business use, withdrawals have exceeded nature's capacity to replenish the supply. Nearest the coast, withdrawals of fresh groundwater have resulted in saltwater intrusion, which may necessitate costly water treatment. In the Piedmont, population growth is stretching available supplies of surface water. This came into focus in 2002, when a four-year drought peaked and more than 90 water systems were forced to order mandatory conservation.

As water use increases, so do challenges to the supply of fresh water. Excessive nutrients and other pollutants threaten surface and groundwater systems while development overloads stormwater collection systems and destroys wetlands that once served as natural filters. North Carolina's continued prosperity depends on protecting its water resources in ways that balance many competing demands, including:

- **A growing population**. North Carolina's population – now 8.5 million – is expected to exceed 12 million by the year 2030.
- **Natural ecosystems and industries that depend on natural resources**. North Carolina's seafood industry alone is valued at $100 million, and recreation and ecotourism industries are growing.
- **New industries**. Many of the state's emerging industries, such as pharmaceuticals, resins and biotechnology, are heavily dependent on clean water.

The Initiative

The Water 2030 Initiative builds on previous work by federal and state agencies, local governments, university researchers and nonprofit organizations. In the early 1970s, Congress passed groundbreaking legislation that led to cleaner rivers, lakes and streams; federal aid for construction of municipal wastewater treatment plants; and safety standards for drinking water. The North Carolina General Assembly made its own clean water history in 1989, becoming the first state in the nation to mandate the creation of state and local water supply plans. That same year, the legislature also passed a law requiring the creation of minimum statewide standards for watershed protection. In the next decade, North Carolina went on to establish the Clean Water Management Trust Fund to finance projects that address water pollution; to launch an environmental protection planning process for the state's 17 major river basins; and to adopt a wetlands restoration program to improve water quality in those basins.

The Rural Center's earlier work also forms part of this background. Initial studies led to the creation of grants programs to help low-income communities finance water and sewer construction. Then in 1998, the center released the results of a three-year investigation that revealed $11.3 billion in needed water and sewer system improvements statewide. The center's investigation gave impetus to the passage of the North Carolina Clean Water Bond Act of 1998, which provided $800 million for local water and sewer projects.

The Water 2030 Initiative will assist North Carolinians in making the next set of critical decisions about water resources. It includes updated information on water-related infrastructure in all 100 counties and estimations of water availability and use through the year 2030.

Capital Needs Projections

	2005-2010 (in billions)	2011-2030 (in billions)	Total (in billions)
Water	$ 2.84	$ 4.80	$ 7.64
Sewer	$ 3.44	$ 4.08	$ 7.52
Stormwater	$ 0.57	$ 0.90	$ 1.47
Total	$ 6.85	$ 9.78	$ 16.63

With the knowledge gained from the initiative, North Carolinians will be in a better position to:

- Understand the impact of the 1998 Clean Water Bond Act and identify future revenue sources for infrastructure improvements and hazard mitigation.
- Understand the impact of regulations on cost of service.
- Identify opportunities for regional cooperation in developing and protecting water resources.
- Target financial investments by federal, state and local governments and other funders.
- Identify gaps in existing data.
- Protect resources vulnerable to tampering or sabotage.

Funding and Partners

A wide range of partners and collaborators have joined the Rural Center to make the Water 2030 Initiative possible. More than $2 million in funding has been provided by the N.C. General Assembly, U.S. Congress through the Environmental Protection Agency, the N.C. Clean Water Management Trust Fund and the Rural Center Board of Directors. Directors of North Carolina's regional Councils of Government have played a critical role as liaisons with local governments and in convening informational meetings. An advisory committee representing business, agriculture, economic development, environmental protection, and national, state, and local governments has provided oversight. A separate technical committee has provided advice on water resources, law, geographic information systems and government operations.

WHAT WE'VE LEARNED . . .

Based on research conducted through the Water 2030 Initiative, the Rural Center has published three reports on its findings. These include: "Impact of the 1998 Clean Water Bonds," "Trends in Water and Sewer Financing," and "Water, Sewer and Stormwater Capital Needs." A fourth report on water supply and demands through 2030 will be published in March 2006. Following is a brief synopsis of the findings in those reports.

N.C. communities benefited significantly from the 1998 Clean Water Bonds.

In 1998, North Carolina voters approved $800 million in bonds to finance critical water and sewer projects across the state. These funds supported 1,103 projects in 97 counties that

- Accounted for 30 percent of all state and federal water and sewer investments in 1995-2005.
- Created or retained 42,000 jobs, primarily in rural, economically distressed areas.
- Corrected major regulatory violations in 97 communities.
- Addressed failing septic systems and contaminated wells in 59 counties.
- Resulted in 50 communities receiving sewer service for the first time.
- Encouraged regionalization: 9 of 10 bond dollars went toward regional utility systems.
- Encouraged planning: 140 communities created capital improvement plans.
- Encouraged eco-friendly practices: 122 projects included water reuse and 324 implemented other conservation measures.

Address competition for water resources within North Carolina and with other states.

North Carolina's greatest population growth is taking place in areas with limited water resources. We must address the increasing demands that this population growth puts on state water resources and develop both interstate and intrastate management strategies that deal with competition for, and future allocation of, water resources. We therefore recommend that North Carolina's Councils of Government conduct a series of regional workshops and conferences to engage citizens and local leaders in a discussion of growth impacts on water resources.

Strengthen environmental education programs.

There is little doubt that North Carolinians have long taken their water resources for granted. There is also little doubt that if North Carolinians are to actively engage in shaping their water future, they must have increased awareness of the value of water and of actions they can take to ensure the continued availability and quality of water in every part of the state. We therefore recommend the establishment of a state-regional-local collaboration on water education to strengthen North Carolina environmental education programs for children, youth and adults.

WATER 2030 FUNDING PARTNERS

N.C. General Assembly

U.S. Congress through the Environmental Protection Agency

N.C. Clean Water Management Trust Fund

N.C. Rural Economic Development Center Board of Directors

WATER 2030 PROJECT DIRECTOR

Jean Crews-Klein, Vice President of Business & Natural Resource Development

N.C. Rural Economic Development Center

4021 Carya Drive, Raleigh, NC 27610

919.250.4314

www.ncruralcenter.org

Financing water and sewer projects is becoming increasingly difficult.

The Rural Center has tracked annual financing of water and sewer projects statewide for the years 1995-2005. The following trends have emerged:

- Private market loans account for 70 percent of water and sewer financing in the state.
- Because of low bond ratings, more than 60 percent of local governments do not qualify for loan programs.
- The U.S. Environmental Protection Agency's role in infrastructure financing is declining. It no longer provides grants and its loan programs are being reduced.
- The U.S. Department of Agriculture has also reduced the amount of grant funds for water and sewer. In 2006, USDA will operate with the smallest grant fund in years.
- The State of North Carolina provided nearly 80 percent of all water and sewer grants in 1995-2005. These grants included Clean Water Bonds, which are now depleted.

North Carolina's water, sewer and stormwater capital needs are mounting.

The Rural Center, through the Water 2030 Initiative, has created a detailed analysis of state water, sewer and stormwater systems statewide. This analysis has revealed that:

- North Carolina's public water, sewer and stormwater utilities will require investments totaling $16.63 billion to keep pace with necessary improvements and population growth over the next 25 years.
- These utilities will require $6.85 billion in investments within the next five years.
- By 2010, the number of people served by North Carolina's public sewer systems will grow by 2.9 percent each year – nearly double the rate of overall population growth.
- By 2030, North Carolina's public water systems are projected to serve 9.8 million people, 70 percent more than today.
- Most water and sewer systems in North Carolina are small, and many are located in economically distressed areas. Yet, monthly bills are often twice as high for customers in small systems as for customers in larger systems.

Population growth will place major demands on N.C.'s water resources.

As part of the Water 2030 Initiative, the Rural Center has conducted an extensive examination of the state's water resources as a foundation for future management. The examination reveals that:

- In North Carolina the majority of water use is, and will be, driven by people. About 70 percent of water use in 2005 is attributed to residential and commercial use, either from public systems or private wells. Agricultural, industrial and mining water use accounts for the remaining 30 percent.
- The population is expected to grow from 8.5 million in 2004 to 12 million in 2030. Water consumption is expected to increase from 241 billion gallons per year for all households to 335 billion gallons if consumption continues on its current path.
- Water is most plentiful in southwestern North Carolina, where annual rainfall averages 90 inches. In contrast, in many of the state's highest growth areas – most notably in the Piedmont and Central Coastal Plain – rainfall averages only 45-60 inches per year and water availability is less.
- With more people comes more pollution. In spite of tremendous progress to improve water quality in North Carolina, continued population and economic growth will place additional pressure on water quality, further reducing the quantity of water available for use. Some surface waters in North Carolina are considered unsafe for drinking water supplies and recreation. The state has more than 700 river segments, totaling nearly 3,000 miles, which are considered "impaired" by pollutants.

WATER2030 RECOMMENDATIONS

Historically a water-rich state, North Carolina is now confronting serious water challenges brought on by a growing population and an expanding economy. In contrast to some states in the U.S. and other countries across the globe, North Carolina is not yet in full-blown crisis. Leaders and citizens still have the opportunity to engage in open dialogue about our water resources, to address urgent issues regarding quality and availability, and to make decisions to ensure that North Carolinians in all parts of the state have access to clean water for years to come.

The following recommendations have emerged from the study of North Carolina water resources conducted by the Rural Center and its partners during the last two years. The center believes there is no matter of greater importance to quality of life or job growth in North Carolina than the judicious use of our water resources, and it encourages North Carolina leaders to take action on these recommendations.

Fund critical water, sewer and stormwater capital needs.

The 1998 Clean Water Bonds resulted in more than 1,100 water and sewer projects that affected 42,000 jobs and had significant impact on human health and environmental well-being. With the bond funds now depleted, the state faces nearly $7 billion in capital needs by 2010. We therefore recommend that the North Carolina General Assembly enact a $1 billion bond bill in the 2006 session to fund construction and repair of urgently needed water, sewer and stormwater facilities. The bill should place special focus on the funding challenges of economically distressed communities in both rural and urban areas.

Activate the State Water Infrastructure Commission.

In 2005, the N.C. General Assembly established within the Governor's Office the State Water Infrastructure Commission, composed of North Carolina's foremost leadership in finance, public infrastructure and water resources. The purpose of the commission is to address the state's long-term water infrastructure needs and to develop a visionary plan for sustained funding of water, sewer and stormwater system improvements. We recommend that remaining appointments be made to the commission and that the commission begin its work in 2006.

Create a permanent funding source for water, sewer and stormwater improvements.

North Carolina's public water, sewer and stormwater utilities will require investments totaling $16.6 billion to keep pace with necessary improvements and population growth over the next 25 years. To ensure that North Carolina can support economic growth, protect human health and preserve its water resources for the future, we recommend that the State Water Infrastructure Commission join with other state and local leaders to develop a permanent revenue source to address water, sewer and stormwater improvements.

Improve operation and management of water, sewer and stormwater systems.

Many existing systems in North Carolina are not operating at full efficiency. We therefore recommend that a statewide campaign be launched to promote substantial improvements in the operation and management of systems that can be demonstrated to extend the useful life of equipment, reduce operating costs, increase efficiency and decrease demands on the state's water resources. Toward that end, we encourage water professionals and educational institutions to partner in expanding opportunities for operator education and training. Improvement efforts should promote use of the International Standards for System Audits that identify system improvements most likely to yield the greatest return for investment.

Ensure that rate structures are soundly developed and fair to citizens and operators.

The rates we charge for water-related services are a primary indicator of the value we place on our water resources. Rates for water, sewer and stormwater services should include amounts needed for sound operation and maintenance of the systems and for future capital improvements. Rates should also account for any limits on the availability of water in the jurisdiction in which they are charged. To expand local government understanding of rate structures and rate setting, we recommend that North Carolina's professional organizations join in sponsoring a series of clinics and conferences. These organizations should include, among others, the North Carolina League of Municipalities, the N.C. Association of County Commissioners, the UNC-Environmental Finance Center, the American Water Works Association, the Local Government Commission and the Rural Water Association.

WATER2030

The Rural Center

Act *Now* for North Carolina's Clean Water Future

- Public water, sewer and stormwater systems in North Carolina will require $6.85 billion in the next five years to meet current needs, address pollution and growth.

- The Rural Center proposes a $1 billion state bond referendum for voters to consider in November 2006 to finance improvements to water and sewer systems.

- This critical infrastructure bond investment can be paid from existing revenues and will not require new taxes. North Carolina can retain its AAA bond rating using funds already in the existing budget for debt service.

- 1998 Clean Water Bonds provided $800 million for water and sewer infrastructure, with 1,103 projects in 97 counties. These funds were soundly invested, but they are gone.

- Public water and sewer systems serve a growing proportion of North Carolina's population. Investment in these systems allows for business and job growth. Failure to invest stymies economic development and jeopardizes water quality.

- Federal infrastructure funding has declined and is expected to shrink further, forcing local governments to borrow for water/sewer projects. But more than 60 percent of local governments cannot qualify for loans, mainly in rural areas.

- North Carolina faces increasing pressure on the state's water resources. At the current rate of use, residential consumption is expected to increase from 244.5 billion gallons a year to 335 billion gallons by 2030.

- North Carolina needs a plan for allocating water resources and funds that is fair to communities and protects our common future.

Critical Preparedness Infrastructure

New State PH Laboratory
and OCME Facility Report
to
Senate Finance Committee

May 10, 2006

Key Role for SLPH: PREPAREDNESS

- Since 2001, serves as the NC lead laboratory for National Laboratory Response Network (LRN) for CDC
- Conduct Bioterrorism testing-anthrax crisis, ricin, postal service testing, white powder testing
- Conducts Chemical terrorism testing
- High level containment laboratory (BSL-3)

Key Role for the Medical Examiner: PREPAREDNESS

- Autopsy Confirmation
- Toxicology
- Mass Casualties
- Federal Team Support Logistics
- Law Enforcement

Governor's Budget Recommendation

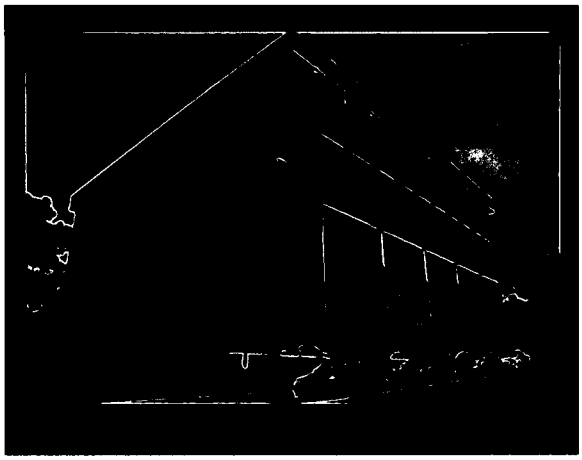
- Pursue design and construction of a new co-located SLPH and OCME facility to replace aging and inadequate facilities.
- $101,000,000
- Based on Updated Feasibility Study 2004

Letter of Support

- Carmen Hooker Odom, Secretary - NC Dept. of Health and Human Services
- Bryan Beatty, Secretary - NC Dept. of Crime Control and Public Safety
- Steve Troxler, Commissioner - NC Dept. of Agriculture and Consumer Services
- Warwick Arden, Dean - NCSU College of Veterinary Medicine

NC State Lab of Public Health

- Bath Building – designed/built early 70's
- Occupied – 1973, included much of DPH
- 75% of Lab work manual; approx. 28% of current workload (1.6 M exams)
- Renovated 1988-89; approx. 95,000 sq.ft.
- Current HVAC inadequate-must keep labs neg. pressure to halls; electrical power unstable and completely inadequate; lack of building security (perimeter)



State Lab Services

- Cancer Cytology (Pap tests)
- Microbiology (identifies pathogenic bacteria, viruses, parasites, foodborne pathogens)
- Newborn Screening/Clinical Chemistry
- Virology/Serology (including rabies)
- Environmental Sciences (includes drinking water testing; environmental contaminants)
- Laboratory Improvement (provides continuing education for labs across the state)

Materials handled by State Lab

Hazardous biological materials that often contain pathogens such as viruses, bacteria, fungi:

- Fecal and urine samples
- Tissue samples
- Blood samples
- Animal heads (rabies); insects & birds (arboviruses)

Hazardous chemicals

Low-level radioactive materials

Suspected bioterrorism samples (e.g., anthrax)

NC SLPH

- 1,000,000 specimens/samples received each year
- Over 6,000,000 test results generated each year
- Train over 2000 laboratorians/HCP each year

Office of Chief Medical Examiner

- Facility built in early 1970's
- Space inadequate – autopsy, morgue, laboratory
- Parking for transport vehicles inadequate
- Access to building inadequate
- Cannot support Mass Fatality situation

Office of the Chief Medical Examiner (continued)

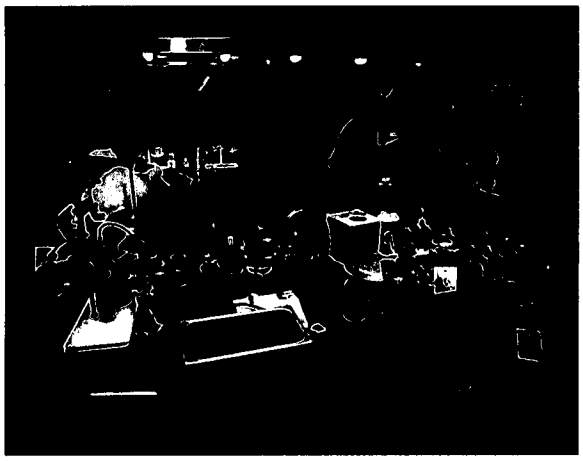
- 1500 autopsies/year – tripled since 1972
- Toxicology tests have doubled since 1999 (quadrupled since 1972) – conduct for all Mes
- Space for Forensic records at capacity

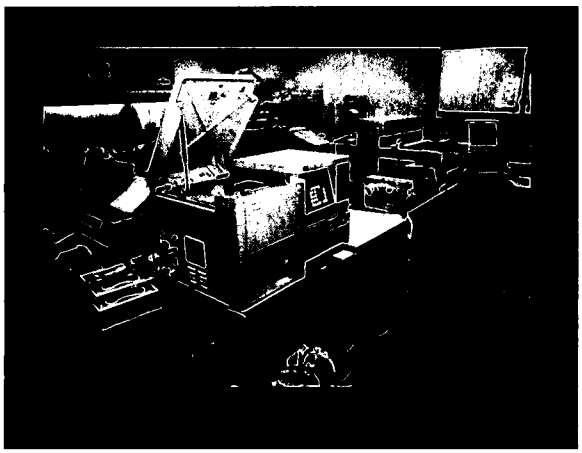
Limitations of today's State Public Health Lab

- *Security*
- *Physical space*
- *Safety issues*
- *Electrical power*
- *Ventilation*
- *Efficiency*

Security

- The loading dock area under building is open; access is not controlled or limited—anyone can drive anything under the building.
- There is no controlled perimeter around the building and no security gate or controlled access.
- Movement through the building of materials/samples





Refrigerators now block this doorway

(Note the personal computer wedged in here)

Safety issues

- Labs lack windows to observe workers
- Emergency exiting is hazardous: convoluted floor plan; poor emergency lighting.
- Tight work areas, maze of small rooms, and narrow hallways crowded with supplies and equipment pose safety concerns.

Safety issues, cont.

- Maze-like halls and strung-together rooms make emergency exits and equipment (including fire extinguishers) hard to spot.
- There are few easily accessed up-to-date eyewash stations or emergency showers in case of chemical or biohazard spills/splashes on lab workers.
- Elevators are unreliable.

Electrical power problems

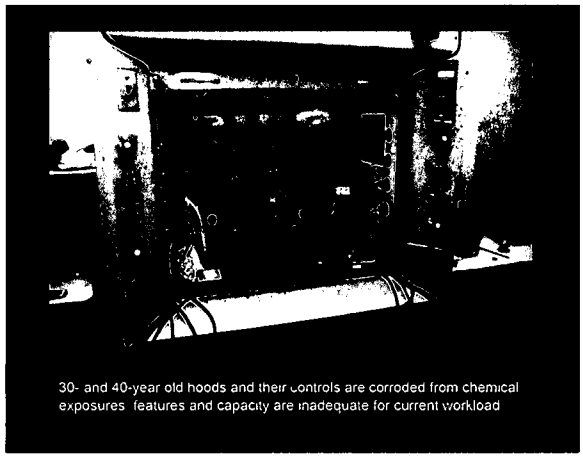
- Electricity is insufficient and unreliable (power outages, surges, brownouts).
- Wiring is inadequate to support power needs.
- Emergency backup power sources are inadequate.
- Lighting is poor in most work areas.

Stinky stuff! Cooker emits ammonium hydroxide fumes

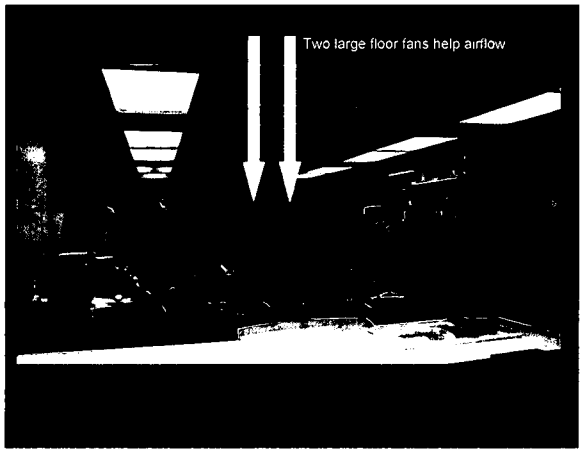
Electrical power is insufficient to run all needed exhaust hoods and cookers at the same time.

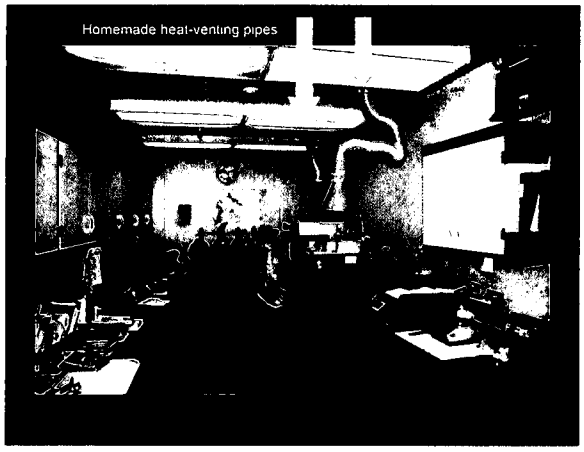
Ventilation limitations

- Climate control system cannot maintain appropriate temperatures for high-tech equipment.
- Air-handling controls are inadequate. Many lab rooms cannot maintain negative air pressure relative to halls—a potential safety hazard (air should flow from halls into labs, not from labs into halls).



30- and 40-year old hoods and their controls are corroded from chemical exposures features and capacity are inadequate for current workload





Efficiency

- Testing procedures must be spread out over several rooms, as spaces are too small for the necessary equipment, supplies and staff.
- Support staff for labs are located on different floors.
- Power supplies are not sufficient to run all needed equipment at the same time.

New PH Labs Constructed

Labs constructed in the past 8 years:

- **Colorado** (1997)
- **Alaska** (2000)
- **Georgia** (2000)
- **California** (2003)
- **Virginia** (2003)
- **Texas** (2003)
- **Arizona** (2004)

New PH Labs in the Works

- **Ohio;**
- **Arkansas** – broke ground 2004;
- **Minnesota**- broke ground 2004;
- **Missouri** (estimated completion, Fall 2006);
- **Oregon** (2006);
- **Indiana** (estimated completion, November 2006);
- **Illinois**- central lab addition (Springfield);
- **Florida** – Jacksonville;
- **Connecticut** - 2009;
- **New Mexico;**
- **Georgia** (Branch lab in Waycross)

New PH Labs Under Discussion

- New Jersey
- Iowa
- North Carolina
- Mississippi
- Louisiana (before and now after Katrina)

New SLPH/OCME facility

- Feasibility study
  - (Paid with CDC BT Grant funds)
- RFP-2003; CUH2A selected (vast experience with other SLPH designs/constructions)
- On-site study - April-July, 2004
- Approx. 127,000 sq. ft. for SLPH's existing and proposed needs; includes OCME

NC Preparedness and Response Critical Infrastructure

Public Health Lab

Medical Examiners Office

Questions?

North Carolina Department of Crime Control and Public Safety

Michael F. Easley, Governor

Bryan E. Beatty, Secretary

May 9, 2006

Dear Senators and Representatives:

As you know, emergency response to natural disasters and disease outbreaks such as a flu pandemic has never been more important.

To ensure that our state is prepared for these and other emergencies, Governor Easley has included the construction of a new state laboratory for public health and medical examiners office in his proposed FY 06-07 budget. Construction of this facility is essential to NC's emergency preparedness and response system. The NC State Laboratory of Public Health serves as the lead laboratory for the National Laboratory Response Network. It is also the primary facility to detect and confirm agents of bioterrorism and emerging pathogens, as well as provide other critical public health testing services for the citizens of our state.

In addition Governor Easley is recommending funds to replace aging laboratory equipment, perform critical facility repairs, and provide capital planning for laboratories in the NC Department of Agriculture and Consumer Services devoted to food protection and animal disease detection.

Agencies across all levels of government are hard at work building a collaborative and cohesive preparedness and response system. Having new state lab facilities is absolutely essential to this effort.

If you would like more information about these state lab facilities– or to arrange a visit to one of the existing lab facilities in Raleigh - please contact State Health Director Leah Devlin at leah.devlin@ncmail.net or (919) 707-5001 or Deputy Commissioner of Agriculture David Smith at david.smith@ncmail.net or (919)733-2113 ext 223.

Sincerely,

Bryan E. Beatty, Secretary
NC Dept. of Crime Control and Public Safety

Warwick Arden, BVSc, DCVS, MS, PhD, DACVS
Dean, NCSU College of Veterinary Medicine

Steve Troxler, Commissioner
NC Dept. of Agriculture and Consumer Services

Carmen Hooker Odom, Secretary.
NC Dept. of Health and Human Services

MAILING ADDRESS:
4701 Mail Service Center
Raleigh, NC 27699-4701
Telephone: (919) 733-2126

www.NCCrimeControl.org
An Equal Opportunity/Affirmative Action Employer

OFFICE LOCATION:
512 N. Salisbury Street
Raleigh, NC 27604-1159
Fax: (919) 715-8477

The Need for Replacement Facilities for Cherry and Broughton Hospitals

Citizens Served

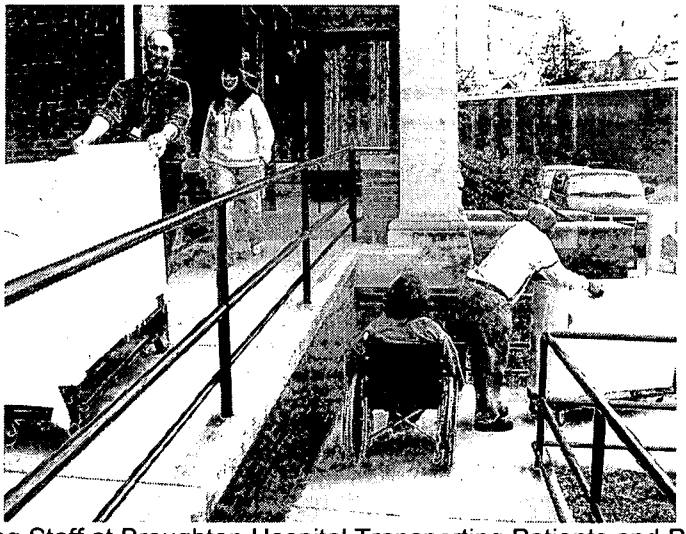
- Cherry Hospital in Goldsboro and Broughton Hospital in Morganton are State psychiatric hospitals serving the eastern and western portions of North Carolina.
- In state fiscal year 2005, 4,892 individuals were served at Cherry Hospital and 4,091 were served at Broughton Hospital.
- The hospitals serve North Carolina residents who have psychiatric illnesses such as schizophrenia, bi-polar disorder and major depression. Approximately 40% of admissions to the hospitals have either a primary or secondary diagnosis of substance abuse.

Need for New Hospitals

The age, condition, and dated design of the current Cherry and Broughton hospitals present challenges in the delivery of patient care, health and safety issues, staffing requirements, and building maintenance.

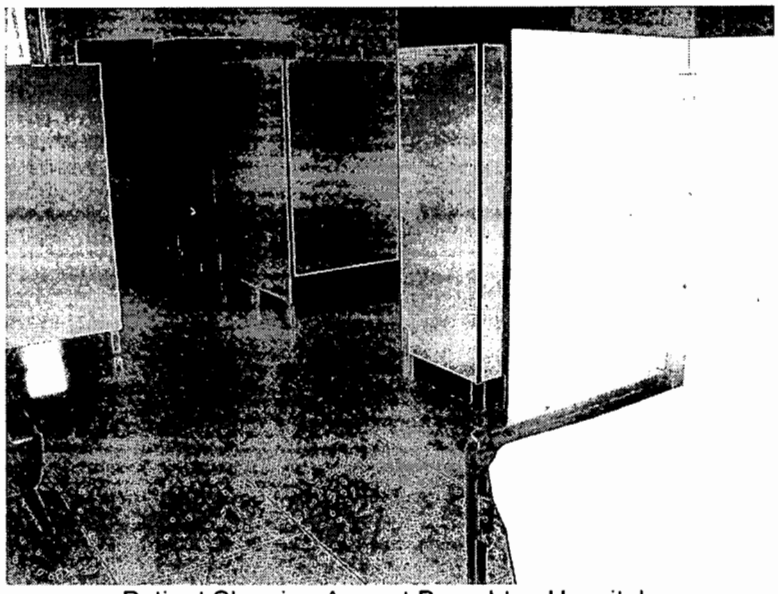
- Age of Buildings. All of the patient facilities are dated and are in need of replacement.
  - Cherry Hospital was founded in 1880. Newer patient buildings date to 1939, and 1951, with the last building constructed in 1962.
  - Broughton Hospital was founded in 1882. The Avery Building, constructed in 1882, is still being used as the primary in-patient building. The two newest buildings date to the 1950's.

- Multiple Buildings. Both Cherry and Broughton Hospitals consist of multiple buildings on campus.
  - Patients and staff move between buildings to participate in treatment and activities, increasing the risk of accidental or intentional injury and patient elopement.
  - Staff members also transport records and equipment between buildings, greatly reducing staff efficiency and the time staff is available for direct patient care.



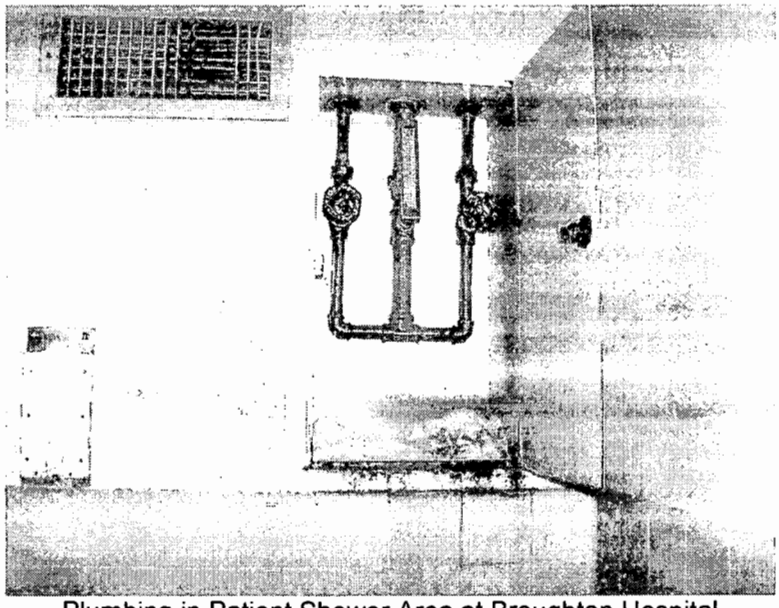
Nursing Staff at Broughton Hospital Transporting Patients and Patient Records to Another Building for Participation in the Treatment Mall

- Outdated Design. The antiquated design of the buildings result in such issues as:
  - Crowded patient areas that do not allow for privacy and can increase interpersonal conflicts.



Patient Sleeping Area at Broughton Hospital

  - Building features, such as plumbing, that present hanging hazards.



Plumbing in Patient Shower Area at Broughton Hospital

- Staffing Inefficiencies. The layouts of the older buildings do not support current staffing requirements and practices in mental health treatment.
  - Poorly placed nursing stations do not allow for adequate patient monitoring requiring more staff to ensure patient safety rather than engage in direct patient treatment.

- Inadequately sized patient wards required additional staffing resources to meet minimum standards (e.g., one ward of 20-25 patients requires less staffing than two wards of 10-12 patients).
- Space is inadequate for routine staff activities that support direct patient care and treatment.

Typical Staff Meeting in an Overcrowded Nurses Station
At Cherry Hospital

- Technology issues. The current buildings are not easily retrofitted for current technology.

- Maintenance/upkeep. Due to the age and current condition of the hospitals, both hospitals need significant repairs and renovations to address serious infrastructure and life safety issues. Over $50 million in immediate critical repair and renovation construction is needed, and it is estimated that the cost for more extensive repairs/renovations at both hospitals will approach the cost of totally new replacement hospitals. Some examples of immediately needed critical repairs and renovations include:
  - Cherry Hospital has no air conditioning in the kitchen where temperature often reaches 100 degrees.
  - Broughton Hospital, Avery Building, needs a new roof. Slate shingles have fallen off the roof causing a serious safety risk for patients, staff and visitors.
  - The steam distribution facilities at both hospitals are antiquated, resulting in highly inefficient use of energy and nearly constant maintenance.
  - Extensive plumbing and bathroom repairs/renovations are needed at both campuses

Current Operational Steam Plant Valves for Heating Buildings
On Cherry and O'Berry Campuses

Damage from Steam Leak at Broughton Hospital

Replacement Hospitals - Details

The replacement of Broughton and Cherry hospitals with modern, well-designed, single structure facilities will eliminate the above shortcomings and ensure state of the art psychiatric treatment for patients and a safe environment for patients and staff, while making the most efficient use of personnel and physical resources.

The Department of Health and Human Services recommends the construction of two new hospitals. Preliminary schematic designs have already been prepared and proposed construction sites evaluated.

- Replacement Hospital – Broughton
  - 382 inpatient beds
  - 419,300 square feet
  - Cost certified by State Construction Office: $162.7 million
- Replacement Hospital - Cherry
  - 304 inpatient beds
  - 374,300 square feet
  - Cost certified by State Construction Office: $145.4 million

HOUSING TRUST FUND

The Housing Trust Fund is North Carolina's only state-funded and state-designed resource for financing affordable housing. It was created by the General Assembly and is managed by the North Carolina Housing Finance Agency, a self-supporting public agency. The N.C. Housing Finance Agency pays all of the Trust Fund's administrative costs. All money appropriated by the General Assembly goes directly into "bricks and mortar."

$50 million annually for the Housing Trust Fund will build the state's economy and will:

- Produce 6,000 affordable homes and apartments each year
- Generate 3,750 jobs each year
- Increase state and local tax revenues by over $37 million
- Leverage $200 million of housing development and preservation

Need

The need for affordable housing far exceeds the resource. More than 2 million North Carolinians have a problem due to housing cost or housing condition.

Clear Focus

- More than 80% of Trust Fund housing benefits very-low-income households (below 50% of local median income). More than 45% of Trust Fund housing benefits extremely-low-income households (below 30% of local median income).

Measurable Results

The Trust Fund is a proven success that has improved housing in all 100 counties, and has won three national awards. It has financed:

- 17,000 homes and apartments
- $473 million of new construction and housing rehabilitation

Flexibility

- The Trust Fund is the state's most flexible housing resource—able to finance home ownership and rental apartments, new construction, rehab and emergency repairs, and supportive housing.
- It provides the state's **largest source of funds for financing supportive housing** for the homeless, victims of domestic violence, persons with mental illness, and others with special needs.
- It provides the state's **largest source of funds for financing emergency repairs and accessibility modifications** that allow elderly and disabled low-income homeowners to continue living in their homes.

Leverage

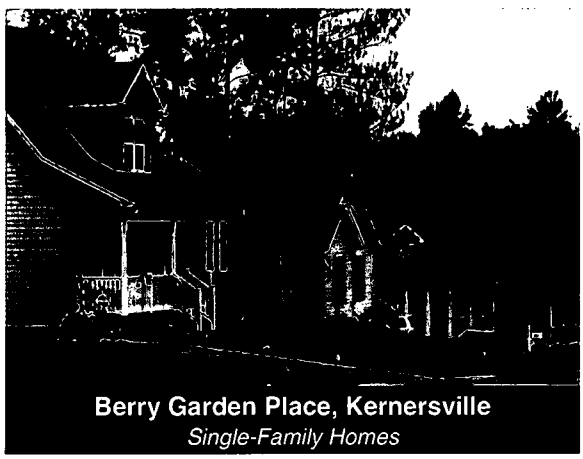
- The Trust Fund leverages an additional $3 of housing for every $1 of state funds, so every $50 million of state funds will result in **$200 million** of housing production.

NORTH CAROLINA
HOUSING
FINANCE
AGENCY

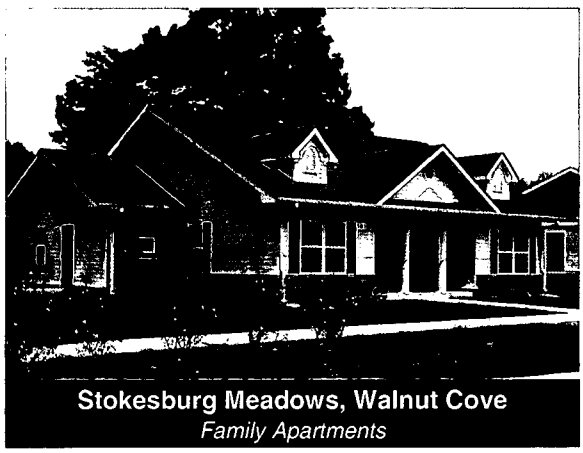
Printed on
recycled paper

Housing Trust Fund...*investing in North Carolina*

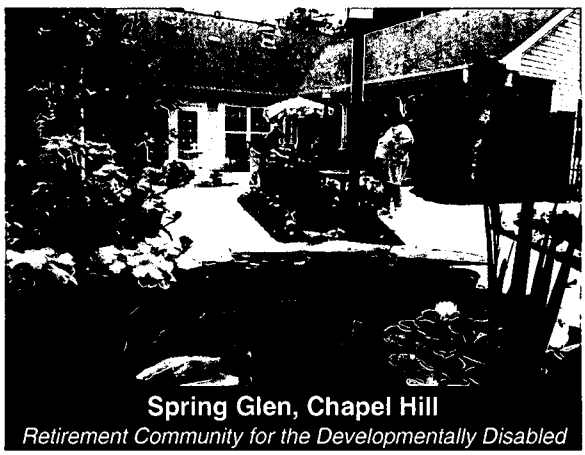
The Housing Trust Fund is a flexible financing tool—that successfully invests in all of North Carolina's 100 counties and that addresses the full range of housing needs—from homeless shelters to first time home buyers.



Berry Garden Place, Kernersville
Single-Family Homes

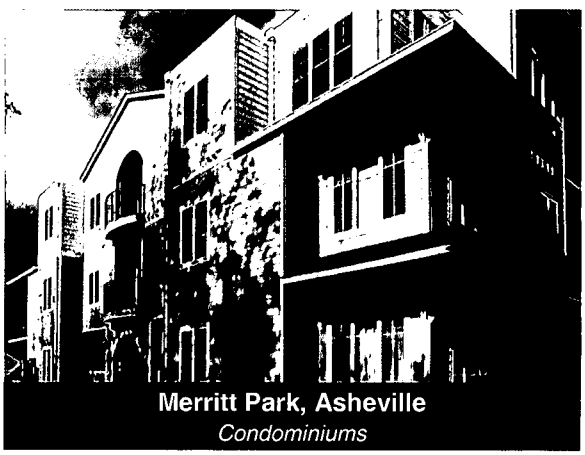


Stokesburg Meadows, Walnut Cove
Family Apartments



Spring Glen, Chapel Hill
Retirement Community for the Developmentally Disabled

White Oak Apartments, Wilmington
Elderly Apartments



Merritt Park, Asheville
Condominiums

NC Justice Center
Opportunity and Prosperity for All

BTC Reports

Vol 12 No 3 • May 2006

THE NEWSLETTER OF THE NC BUDGET & TAX CENTER

North Carolina Budget & Tax Center

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

EDITOR: Elaine Mejia
919/856-2176
elaine@ncjustice.org
www.ncjustice.org/btc

THE HOUSING TRUST FUND: Is State Support Adequate?

BY: AMNA CAMERON, FISCAL POLICY ANALYST, AND JOHN QUINTERNO, RESEARCH ASSOCIATE

Executive Summary

- Some 43 percent of all North Carolina renters are unable to rent a two-bedroom apartment without spending more than 30 percent of their incomes on housing costs (rent and utilities). A typical teacher's assistant, for instance, is unable to rent a two-bedroom apartment without being housing burdened in any North Carolina county and can afford a one-bedroom apartment in fewer than half.

- To address the problem of unaffordable housing, North Carolina established a Housing Trust Fund in 1987. The Housing Finance Agency uses appropriations to this special fund to develop affordable housing for low-income individuals, especially those who are elderly, homeless or disabled.

- The current reoccurring appropriation of $3 million appears insufficient to meet North Carolina's affordable housing needs – needs exacerbated by changes in the economy and federal housing policy.

- Additional, more stable funding for the Housing Trust Fund would help shelter low-income North Carolinians and provide concrete economic benefits. Estimates show that every $10 million in appropriations would house 1,200 low-income residents, create 600 jobs, generate $6 million in new state and local tax revenues and leverage a total of $40 million in funds for housing needs.

Overview

A growing number of working North Carolinians struggle to find affordable housing. In 2004, for example, 47 percent of all low-income working families spent over one-third of their annual income on housing – an amount that makes them "housing burdened" under federal guidelines. To counter this problem, the state finances a special Housing Trust Fund to spur development of affordable housing. Current funding levels, however, appear insufficient to meet the state's housing needs. This issue of BTC Reports *documents the need for affordable housing in North Carolina, assesses the impact of the Housing Trust Fund; and evaluates the adequacy of current funding levels.*

Housing Affordability in North Carolina

The 2000 U.S. Census found that 762,000 North Carolina households were "housing burdened," meaning that they spent over one-third of their monthly incomes on housing costs (rent or mortgage payments plus utility bills). Some 60 percent of these households owned their homes while the remaining 40 percent rented their residences (Figure 1).[1]

FIGURE 1

COST BURDENED HOUSEHOLDS IN NORTH CAROLINA, 2000 CENSUS

	Number	Percent
Total	***762,000***	***100.0%***
Renters	302,000	39.6%
Owners	460,000	60.4%

Source: NC Housing Finance Agency

In 2005, the fair market rent for a two-bedroom apartment in North Carolina cost $631/month. The fair market rent is a federal measure of the amount needed to rent a typical, decent apartment in a local housing market. Normally, the fair market rent is set at the price at or below which 40 percent of all qualifying housing units rent.[2] For the average North Carolina renter to pay the fair market rent for a two bedroom apartment without being housing burdened, that renter would need to earn at least $2,103/month. In contrast, the average renter in North Carolina earns $1,856/month.[3]

There are only four North Carolina counties – Burke, Durham, Mecklenburg and Wilkes – where the average renter is paid enough to pay for a two-bedroom apartment without being housing burdened. In Wake County, the average renter is paid $2,016/month but must earn $2,723/month to afford a two-bedroom apartment without being housing burdened. Meanwhile, the average renter in Graham County is paid $1,113/month, but needs $1,677/month to pay for a two-bedroom apartment without being housing burdened (Figure 2).[4]

Affordability problems are especially pronounced for low-income households. Half of the state's lowest-income households – those earning less than $16,090/year – devote more than half of their incomes to housing. Housing burdens confront 62 percent of the state's lowest-income renters and 37 percent of the lowest-income homeowners.[5] Affordability problems generally are most severe for individuals who are elderly, disabled or homeless. A disabled individual receiving a Supplemental Security Income payment of $579/month, for example, cannot afford the fair market rent for a one-bedroom apartment in any North Carolina county.[6]

FIGURE 2

ANNUAL INCOME NEEDED TO AFFORD FAIR MARKET RENT, SELECT COUNTIES, 2005

		1-BEDROOM APARTMENT, FAIR MARKET RENT		2-BEDROOM APARTMENT, FAIR MARKET RENT	
Geography	Median Income	Needed Income	% Median Income	Needed Income	% Median Income
NORTH CAROLINA	$53,635	$22,059	41%	$25,241	47%
Camden	$42,700	$19,320	45%	$22,800	53%
Clay	$43,100	$16,800	39%	$20,120	47%
Cumberland	$46,500	$21,040	45%	$23,520	51%
Forsyth	$56,800	$21,240	37%	$24,600	43%
Graham	$37,400	$16,800	45%	$20,120	54%
Guilford	$55,400	$24,320	44%	$27,120	49%
Hyde	$40,300	$19,320	48%	$22,800	57%
Mecklenburg	$62,500	$24,520	39%	$27,200	44%
Tyrell	$36,400	$19,320	53%	$22,800	63%
Wake	$69,800	$29,360	42%	$32,680	47%

Source: National Low Income Housing Coalition

The North Carolina Housing Trust Fund

To address the state's need for affordable housing, the North Carolina General Assembly established a Housing Trust Fund in 1987. The state's Housing Finance Agency, a self-supporting public entity, uses this special fund to develop affordable, private-sector housing for low-income individuals, especially those who are elderly, disabled or homeless. Funds also are used to rehabilitate or repair existing housing and assist first-time homeowners.[7]

The original money for the Trust Fund came from a $20 million legal settlement with the oil industry. In 1990, the state legislature began investing General Fund dollars in the Trust Fund and broadened the ways in which funds could be spent. The Trust Fund has received, to date, $57.7 million in General Fund appropriations – an average of $3.6 million/year. Appropriations from the General Fund, however, have fluctuated widely over time and in some years the Trust Fund has received no money.[8] In the current fiscal year, the General Assembly appropriated $8 million to the Trust Fund, an increase of $5 million (in non-recurring funds) over the previous year.

Funds are disbursed through an application process in which local governments, private-sector developers, local lending institutions and nonprofit organizations like Habitat for Humanity participate. The Housing Finance Agency oversees the application process, packages Trust Fund dollars with other state and federal programs and tax credits and ensures that financed projects remain affordable. Additionally, the Housing Finance Agency pays all of the Trust Fund's administrative costs, meaning that all Trust Fund dollars go directly to construction costs.[9]

North Carolina is one of 37 states with a housing trust fund. While these funds typically share a common purpose, they differ greatly in terms of their funding streams. Most receive revenues from one of six sources: 1) annual General Fund appropriations; 2) interest earned by government-held accounts; 3) public debt; 4) earmarks of sales or property taxes; 5) fees levied on new real estate developments; and 6) dedicated real estate taxes and fees like transfer taxes or document recording fees.[10] Compared to other states, North Carolina has more limited funding options

owing to the absence of state property taxes and impact fees, and constitutional limitations on the use of interest generated by the escheat fund.

Florida, Washington and Ohio operate three of the nation's largest housing trust funds. Florida currently generates $500-$600 million/year for its Housing Trust Fund through a set-aside of a portion of the revenue raised by a documentary stamp tax. Washington, meanwhile, allocates $100 million/biennium from the state's capital budget to the trust fund. Lastly, since 2003, Ohio has dedicated up to $50 million/annually from a real estate recording fee to affordable housing needs.[11]

Effectiveness of the Housing Trust Fund

The $3.6 million average annual appropriation to the Housing Trust Fund – an amount equal to 0.02 percent of total General Fund spending for Fiscal Year 2006 – has yielded significant housing and economic benefits. Since 1990, the Trust Fund has financed the rehabilitation or construction of 17,000 homes across the state. In the process, Trust Fund dollars have generated 7,800 jobs and $67 million in new state and local tax revenues. Additionally, Trust Fund dollars have leveraged an additional $402 million in federal, nonprofit and private-sector funding for affordable housing. The Housing Finance Agency estimates that every $1 of state funding draws down $3.68 in additional funds.[12]

The Housing Trust Fund particularly benefits low-income North Carolinians. Approximately 80 percent of the housing units supported by the Trust Fund shelter very low-income households, meaning those earning less than 50 percent of median income ($26,818/year statewide). More specifically, 45 percent of the Trust Fund's benefits flow to the lowest-income North Carolinians, those earning below 30 percent of median income ($16,090/year statewide).[13]

Adequacy of the Housing Trust Fund

Although the Housing Trust Fund has supported many beneficial projects across the state, it appears under-funded relative to North Carolina's need for affordable housing. In fact, the need for such housing only has grown in recent years owing to changes in the economy and federal housing policy.

Economically, housing costs have risen sharply in recent years. Adjusting for inflation, for example, the typical homeowner paid 14 percent more in 2000 than in 1990.[14] Price increases have been especially burdensome for households with low or fixed incomes. Further proof of the pressures resulting from rising housing costs, at least for homeowners, is found in the state's foreclosure rate, which tripled between 1998 and 2004.[15]

Rising housing costs are not just a problem for extremely poor households, but also for many middle-class ones. The typical teacher's assistant, for instance, earns $18,441/year and is unable to afford the fair market rent for a two-bedroom apartment without being housing burdened in any North Carolina county, and can pay the rent for a one-bedroom apartment in fewer than half (Figure 3).[16] *In fact, none of the jobs expected to add the most positions in North Carolina by 2012 pay enough to meet the fair market rent for a one-bedroom apartment without resulting in housing burdens* (Figure 4).[17]

Changes in federal housing policy have exacerbated further the problem of housing affordability. After adjusting for inflation, federal funding for low-income housing

FIGURE 3

RENT AFFORDABILITY FOR SELECT OCCUPATIONS

Occupation	2006 Average NC Wage	# of Counties Where Worker Can Afford Fair Market Rent: One Bedroom	# of Counties Where Worker Can Afford Fair Market Rent: Two Bedrooms
Bank Teller	$22,171	84	51
Police Officer	$36,544	100	100
Registered Nurse	$59,452	100	100
Roofer	$25,129	94	83
Teacher Assistant	$18,441	45	0
Disabled- Supplemental Security Income	$6,624	0	0
Minimum Wage Worker	$10,712	0	0

Source: NC Budget & Tax Center; National Low Income Housing Coalition

FIGURE 4

HOUSING WAGE FOR FIVE FASTEST GROWING OCCUPATIONS, 2002-2012

Occupation	2006 Average NC Wage	Hourly Housing Wage	Housing Wage	% Housing Wage
Registered Nurses	$24.26	$12.41	Yes	195.5%
Cashiers	$7.69	$12.41	No	62.0%
Retail Salespersons	$10.42	$12.41	No	84.0%
Waitpersons	$7.21	$12.41	No	58.1%
Food Preparation Workers	$8.03	$12.41	No	64.7%

Source: NC Budget & Tax Center; Employment Security Commission

programs dropped from $68 million in 1976 to $27.7 million in 2005.[18] Compensating for this decline, in fact, was a major reason why North Carolina and other states originally established housing trust funds. Additionally, changes in federal policy have reduced support for initiatives targeted at low-income individuals and renters. So while extremely low-income households qualify for federal housing vouchers, comparatively few actually receive vouchers due to insufficient funding.[19]

Both of these trends suggest that the need for affordable housing in North Carolina will grow in the coming years. Consequently, some advocates have called for additional funding from a more regular and predictable revenue source for the Housing Trust Fund. Initial estimates suggest that additional funding will yield significant economic and housing benefits. A methodology devised by the Housing Finance Agency suggests that every $10 million appropriated to the Trust Fund would house 1,200 low-income residents, create 600 jobs, generate $6 million in new tax revenues and draw down a total $40 million in other financial resources for housing.[20]

Conclusion

North Carolina's Housing Trust Fund has helped address the state's need for affordable housing at a relatively modest cost. Current funding levels, however, appear insufficient to meet the Tar Heel State's demand for affordable housing – a demand that is growing due to changes in the economy and federal housing policy. Additional, more stable funding could not only help thousands of low-income households secure affordable housing, but also create jobs, expand tax revenues and leverage millions of dollars in additional funding across all 100 North Carolina counties.

1 Author's analysis of data presented in North Carolina Housing Finance Agency, "Housing Market and Needs Analysis," Draft Document, 2004.

2 U.S. Department of Housing and Urban Development. Available at http://www.huduser.org/periodicals/USHMC/winter98/summary-2.html

3 Author's analysis of data presented in National Low Income Housing Coalition, "Out of Reach 2005: North Carolina." Available at http://www.nlihc.org

4 *Ibid.*

5 Danilo Pelleteire Mark Treskon, and Sheila Crowley, "Who's Bearing the Burden? Severely Unaffordable Housing: An

Examination of National and State Affordable Housing Needs from the 2003 American Community Survey," National Low Income Housing Coalition, August 2005.

6 National Low Income Housing Coalition.

7 North Carolina Housing Finance Agency, "Facts on the Housing Trust Fund: Activity through December 31, 2005." Available at http://www.nchfa.com/About/facts.aspx

8 *Ibid.*

9 *Ibid.*

10 Center for Community Change, "Housing Trust Fund Progress Report 2002," June 2002. Available at http://www.communitychange.org/shared/publications/downloads/HousingSurvey2002.pdf

11 Data from web sites of Florida Housing Finance Corporation, Washington State Housing Finance Commission and Ohio Affordable Housing Trust Fund.

12 North Carolina Housing Finance Agency, "Facts on the Housing Trust Fund."

13 *Ibid.*

14 North Carolina Housing Finance Agency, "Housing Market and Needs Analysis."

15 North Carolina Administrative Office of the Courts.

16 Author's analysis of data from National Low Income Housing Coalition. See note 2.

17 *Ibid.*

18 Cushing Dolbeare, Irene Saraf and Shelia Crowley, "Changing Priorities." Washington, DC: National Low Income Housing Coalition, October 2004.

19 Pelleteire, "Who's Bearing the Burden?"

20 North Carolina Housing Finance Agency.

North Carolina Justice Center

P.O. Box 28068 ▪ Raleigh, NC 27611-8068
919/856-2176 ▪ elaine@ncjustice.org

NONPROFIT ORG.
US Postage
PAID
Raleigh, North Carolina
Permit No. 1424

North Carolina General Assembly

House Committee on Finance

Minutes

~

May 23, 2006

The House Committee on Finance met on Tuesday, May 23, 2006 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Gibson, Howard, Luebke, and Wainwright; Vice-Chairs Daughtridge, Hill, Ross, Weiss, and Womble; and Representatives B. Allen, Blackwood, Blust, Bordsen, Capps, Carney, Dockham, England, Faison, Fisher, Folwell, Glazier, Hackney, Holliman, Insko, Jones, Lucas, McGee, Rayfield, Underhill, Vinson, Walend and Wiley. Also present were Sergeant-at-Arms Fred Hines, Marvin Lee, Dusty Rhodes, and James Worth. Staff persons present included Cindy Avrette, Rodney Bizzell, David Crotts, Trina Griffin, Linda Millsaps, and Martha Walston. The Agenda and Visitor Registration Sheet are attached and incorporated into these minutes as **attachments 1 and 2**.

Chairman Gibson called the meeting to order at 8:36 am and recognized the five (5) pages present: (1) Candace Davis of Columbus County, sponsored by Representative Hill; (2) Casey Horne of Columbus County, sponsored by Representative Hill; (3) Allison Croft of Davidson County, sponsored by Representative Dockham; (4) Anna Sauls of Pasquotank County, sponsored by Representative Owens; and (5) Piotr Zlotowski of Johnston County, sponsored by Speaker Black.

The first bill under the Committee's consideration was **HB 1898 – S CORP INCOME TAX ADJUSTMENTS** (see **attachment 3**). Chairman Gibson first recognized Representative Hill who moved for the adoption of the proposed committee substitute for the Committee's consideration. The motion was adopted. Chairman Gibson then recognized the bill sponsor, Representative Wilkins, who explained that this bill was a recommendation of the Revenue Laws Study Committee and makes corporate income tax adjustments inapplicable to S Corporations beginning with the 2006 taxable year. Following the explanation, Representative Faison was recognized and asked for a further explanation of why this bill is needed. Chairman Gibson then recognized Trina Griffin of Research who stated that this bill brings the North Carolina tax code in line with the Federal tax code. Representative Ross was then recognized and asked if the tax rates would change. David Crotts of Fiscal Research then responded that this bill would only affect a very limited number of taxpayers. Chairman Gibson then recognized Representative Blackwood who asked if this bill would have a negative impact on taxpayers. Greg Radford, Director of the Corporate, Excise, and Insurance Tax Division of the North Carolina Department of Revenue was recognized and stated that a minimal impact would only be felt by those now filing corporate adjustments who would be required to file individual adjustments under this bill. Chairman Gibson then recognized Representative Hill who moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. Since there was no further discussion, Chairman Gibson called the motion to a vote and it carried by consent.

Chairman Gibson then recognized Representative Wainwright to explain **HB 1892 – IRC UPDATE** (see **attachment 4**). Representative Wainwright stated that this bill is another recommendation of the Revenue Laws Study Committee that includes changes that would shorten the time span which taxpayers would have to file an amended estate, income, or gift tax return when the federal government determines the amount on which the tax is based. Representative Underhill was then recognized and asked why North Carolina needs to change the time frame from 2 years to six months for one to file an adjustment. Chairman Gibson then recognized Martha Walston of Fiscal Research who responded that the six-month time span would bring North Carolina's code in line with most other states in this respect. Representative Womble was then recognized and moved that House Bill 1892 be given a favorable report by the Committee. As there was no further discussion, Chairman Gibson called the motion to a vote, and it carried without objection.

The next bill considered by the Committee was **HB 1938 – AMEND TAXATION OF LOGGING MACHINARY** (see **attachment 5**). Chairman Gibson recognized Representative Wainwright who explained that the bill conforms the sales and use tax of logging machinery to that of farm machinery. Under this bill, the tax rate on mill machinery would be one percent (1%) with an $80 maximum tax per article. Following the explanation, Representative Hackney was recognized and asked about who recommended the bill. Representative Wainwright responded that this bill was a recommendation from the Revenue Laws Study Committee and is a part of the streamlined sales tax agreement in North Carolina. He then stated that this bill would have the effect of decreasing revenue by $2.8 million. Chairman Gibson then recognized Representative Hill who moved that House Bill 1938 be given a favorable report by the Committee. Representative Daughtridge was then recognized and offered his support of the bill and asked why some farmers are not being provided the $80 maximum tax exemption. Andy Sabol from the Department of Revenue was then recognized and replied that farmers should have been seeing the exemption as of January 1, 2006. Since there was no further discussion, Chairman Gibson called the motion to a vote and it carried by consent.

Chairman Gibson then recognized Representative Luebke to explain **HB 1962 – FRANCHISE TAX LOOPHOLE CLOSING** (see **attachment 6**). Representative Luebke stated that this bill applies the corporate franchise tax to limited liability companies that elect to be taxed as a C Corporation for federal income tax purposes. Following the explanation, Chairman Gibson recognized Representative Blackwood who asked if the change makes companies choose the same classification for all levels of government: Federal, State, and local. Representative Luebke then affirmed that this bill would make companies follow the same tax classification for all levels of government. Chairman Gibson then recognized Representative Glazier who moved that House Bill 1862 be given a favorable report by the Committee. As there was no further debate, Chairman Gibson called the motion to a vote, and it carried without objection.

The next bill being considered was **HB 2048 – EXPANSION OF ROYALTY REPORTING OPTION** (see **attachment 7**). Representative Luebke was recognized by Chairman Gibson and explained that the bill was another recommendation of the Revenue Laws Study Committee and it would expand the reporting option available to corporations and their related members with regard to reporting the receipt of royalty payments by including payments for patents and copyrights. Following the explanation, Representative Hill was recognized and moved that House Bill 2048 be given a favorable report by the Committee. Seeing no further discussion, Chairman Gibson called the motion to a vote and it carried by consent.

The final bill considered by the Committee was **HB 1915 – SSTA SALES TAX DEFN/SALES TAX PAYMENTS** (see **attachment 8**). Representative Hill was then recognized to explain the bill. He stated that this bill is another recommendation of the Revenue Laws Study

Committee and conforms the telecommunications sales and use tax laws to the provisions of the Streamlined Sales Tax Agreement. The bill also replaces semimonthly payment sales tax schedules with single monthly payments and makes the prepayment of the next month's liability due on the same day as the monthly payment. Representative Wiley was then recognized and asked about why a change is needed in the payment schedules. Cindy Avrette of Research was then recognized and replied that large retailers requested this change in the payment schedules. Representative Holliman was then recognized and moved that House Bill 1915 be given a favorable report by the Committee. As there was no further debate, Chairman Gibson called the motion to a vote, and it carried without objection.

Having no further business before the Committee, Chairman Gibson then adjourned the meeting at 9:15 am.

Respectfully submitted,

Representative Pryor Gibson
Presiding Co-Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:

1. Agenda
2. Visitor Registration Sheet
3. House Bill 1898 (and related materials)
4. House Bill 1892 (and related materials)
5. House Bill 1938 (and related materials)
6. House Bill 1962 (and related materials)
7. House Bill 2048 (and related materials)
8. House Bill 1915 (and related materials)

North Carolina General Assembly

House Committee on Finance

Minutes

~

May 23, 2006

The House Committee on Finance met on Tuesday, May 23, 2006 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Gibson, Howard, Luebke, and Wainwright; Vice-Chairs Daughtridge, Hill, Ross, Weiss, and Womble; and Representatives B. Allen, Blackwood, Blust, Bordsen, Capps, Carney, Dockham, England, Faison, Fisher, Folwell, Glazier, Hackney, Holliman, Insko, Jones, Lucas, McGee, Rayfield, Underhill, Vinson, Walend and Wiley. Also present were Sergeant-at-Arms Fred Hines, Marvin Lee, Dusty Rhodes, and James Worth. Staff persons present included Cindy Avrette, Rodney Bizzell, David Crotts, Trina Griffin, Linda Millsaps, and Martha Walston. The Agenda and Visitor Registration Sheet are attached and incorporated into these minutes as **attachments 1 and 2**.

Chairman Gibson called the meeting to order at 8:36 am and recognized the five (5) pages present: (1) Candace Davis of Columbus County, sponsored by Representative Hill; (2) Casey Horne of Columbus County, sponsored by Representative Hill; (3) Allison Croft of Davidson County, sponsored by Representative Dockham; (4) Anna Sauls of Pasquotank County, sponsored by Representative Owens; and (5) Piotr Zlotowski of Johnston County, sponsored by Speaker Black.

The first bill under the Committee's consideration was **HB 1898 – S CORP INCOME TAX ADJUSTMENTS** (see **attachment 3**). Chairman Gibson first recognized Representative Hill who moved for the adoption of the proposed committee substitute for the Committee's consideration. The motion was adopted. Chairman Gibson then recognized the bill sponsor, Representative Wilkins, who explained that this bill was a recommendation of the Revenue Laws Study Committee and makes corporate income tax adjustments inapplicable to S Corporations beginning with the 2006 taxable year. Following the explanation, Representative Faison was recognized and asked for a further explanation of why this bill is needed. Chairman Gibson then recognized Trina Griffin of Research who stated that this bill brings the North Carolina tax code in line with the Federal tax code. Representative Ross was then recognized and asked if the tax rates would change. David Crotts of Fiscal Research then responded that this bill would only affect a very limited number of taxpayers. Chairman Gibson then recognized Representative Blackwood who asked if this bill would have a negative impact on taxpayers. Greg Radford, Director of the Corporate, Excise, and Insurance Tax Division of the North Carolina Department of Revenue was recognized and stated that a minimal impact would only be felt by those now filing corporate adjustments who would be required to file individual adjustments under this bill. Chairman Gibson then recognized Representative Hill who moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. Since there was no further discussion, Chairman Gibson called the motion to a vote and it carried by consent.

Chairman Gibson then recognized Representative Wainwright to explain **HB 1892 – IRC UPDATE** (see **attachment 4**). Representative Wainwright stated that this bill is another recommendation of the Revenue Laws Study Committee that includes changes that would shorten the time span which taxpayers would have to file an amended estate, income, or gift tax return when the federal government determines the amount on which the tax is based. Representative Underhill was then recognized and asked why North Carolina needs to change the time frame from 2 years to six months for one to file an adjustment. Chairman Gibson then recognized Martha Walston of Fiscal Research who responded that the six-month time span would bring North Carolina's code in line with most other states in this respect. Representative Womble was then recognized and moved that House Bill 1892 be given a favorable report by the Committee. As there was no further discussion, Chairman Gibson called the motion to a vote, and it carried without objection.

The next bill considered by the Committee was **HB 1938 – AMEND TAXATION OF LOGGING MACHINARY** (see **attachment 5**). Chairman Gibson recognized Representative Wainwright who explained that the bill conforms the sales and use tax of logging machinery to that of farm machinery. Under this bill, the tax rate on mill machinery would be one percent (1%) with an $80 maximum tax per article. Following the explanation, Representative Hackney was recognized and asked about who recommended the bill. Representative Wainwright responded that this bill was a recommendation from the Revenue Laws Study Committee and is a part of the streamlined sales tax agreement in North Carolina. He then stated that this bill would have the effect of decreasing revenue by $2.8 million. Chairman Gibson then recognized Representative Hill who moved that House Bill 1938 be given a favorable report by the Committee. Representative Daughtridge was then recognized and offered his support of the bill and asked why some farmers are not being provided the $80 maximum tax exemption. Andy Sabol from the Department of Revenue was then recognized and replied that farmers should have been seeing the exemption as of January 1, 2006. Since there was no further discussion, Chairman Gibson called the motion to a vote and it carried by consent.

Chairman Gibson then recognized Representative Luebke to explain **HB 1962 – FRANCHISE TAX LOOPHOLE CLOSING** (see **attachment 6**). Representative Luebke stated that this bill applies the corporate franchise tax to limited liability companies that elect to be taxed as a C Corporation for federal income tax purposes. Following the explanation, Chairman Gibson recognized Representative Blackwood who asked if the change makes companies choose the same classification for all levels of government: Federal, State, and local. Representative Luebke then affirmed that this bill would make companies follow the same tax classification for all levels of government. Chairman Gibson then recognized Representative Glazier who moved that House Bill 1862 be given a favorable report by the Committee. As there was no further debate, Chairman Gibson called the motion to a vote, and it carried without objection.

The next bill being considered was **HB 2048 – EXPANSION OF ROYALTY REPORTING OPTION** (see **attachment 7**). Representative Luebke was recognized by Chairman Gibson and explained that the bill was another recommendation of the Revenue Laws Study Committee and it would expand the reporting option available to corporations and their related members with regard to reporting the receipt of royalty payments by including payments for patents and copyrights. Following the explanation, Representative Hill was recognized and moved that House Bill 2048 be given a favorable report by the Committee. Seeing no further discussion, Chairman Gibson called the motion to a vote and it carried by consent.

The final bill considered by the Committee was **HB 1915 – SSTA SALES TAX DEFN/SALES TAX PAYMENTS** (see **attachment 8**). Representative Hill was then recognized to explain the bill. He stated that this bill is another recommendation of the Revenue Laws Study

Committee and conforms the telecommunications sales and use tax laws to the provisions of the Streamlined Sales Tax Agreement. The bill also replaces semimonthly payment sales tax schedules with single monthly payments and makes the prepayment of the next month's liability due on the same day as the monthly payment. Representative Wiley was then recognized and asked about why a change is needed in the payment schedules. Cindy Avrette of Research was then recognized and replied that large retailers requested this change in the payment schedules. Representative Holliman was then recognized and moved that House Bill 1915 be given a favorable report by the Committee. As there was no further debate, Chairman Gibson called the motion to a vote, and it carried without objection.

Having no further business before the Committee, Chairman Gibson then adjourned the meeting at 9:15 am.

Respectfully submitted,

Representative Pryor Gibson
Presiding Co-Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:

1. Agenda
2. Visitor Registration Sheet
3. House Bill 1898 (and related materials)
4. House Bill 1892 (and related materials)
5. House Bill 1938 (and related materials)
6. House Bill 1962 (and related materials)
7. House Bill 2048 (and related materials)
8. House Bill 1915 (and related materials)

AGENDA

ATTACHMENT 1

House Finance Committee

Tuesday, May 23, 2006
8:30 a.m.
Room 544 LOB
Chaired by: Rep. Gibson

Co-Chairs

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

Call to Order

Introduction of Pages

Bills:

HB 1892 **IRC UPDATE** *Reps. Wainwright, Luebke, Carney, & Wilkins*

HB 1898 **S CORP INCOME TAX ADJUSTMENTS** *Rep. Wilkins*

HB 1915 **SSTA SALES TAX DEFN/SALES TAX PAYMENTS** *Rep. Hill*

HB 1938 **AMEND TAXATION OF LOGGING MACHINERY**
Reps. Wainwright, Church, McComas, & Underhill

HB 1962 **FRANCHISE TAX LOOPHOLE CLOSING** *Rep. Luebke*

HB 2048 **EXPANSION OF ROYALTY REPORTING OPTION** *Rep. Luebke*

Adjournment

CORRECTED NOTICE #2:
HB 1963 – REMOVED

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

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

DAY & DATE: **Tuesday, May 23, 2006**

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

LOCATION: **Room 544, LOB**

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

HB 1892 – IRC UPDATE – Reps. Wainwright, Luebke, Carney, & Wilkins

HB 1898 – S CORP INCOME TAX ADJUSTMENTS – Rep. Wilkins

HB 1915 – SSTA SALES TAX DEFN/SALES TAX PAYMENTS – Rep. Hill

HB 1938 – AMEND TAXATION OF LOGGING MACHINERY
– Reps. Wainwright, Church, McComas, & Underhill

HB 1962 – FRANCHISE TAX LOOPHOLE CLOSING – Rep. Luebke

~~**HB 1963 – REVENUE LAWS TECH. & MOTOR FUEL TAX CHANGES – Rep. Luebke**~~

HB 2048 – EXPANSION OF ROYALTY REPORTING OPTION – Rep. Luebke

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

I hereby certify this notice was filed by the committee clerk at the following offices at **2:40 pm** on **May 22, 2006**:

X Principal Clerk
X Reading Clerk - House Chamber

Jason Cannon (Committee Clerk)

CORRECTED NOTICE:
HB 1891 – REMOVED

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

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

DAY & DATE: **Tuesday, May 23, 2006**

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

LOCATION: **Room 544, LOB**

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

~~**HB 1891 – CLARIFY ADDITIONAL GROSS PREMIUMS TAX**~~
~~**Reps. Wainwright, Luebke, Church, & Hill**~~

HB 1892 – IRC UPDATE – Reps. Wainwright, Luebke, Carney, & Wilkins

HB 1898 – S CORP INCOME TAX ADJUSTMENTS – Rep. Wilkins

HB 1915 – SSTA SALES TAX DEFN/SALES TAX PAYMENTS – Rep. Hill

HB 1938 – AMEND TAXATION OF LOGGING MACHINERY
– Reps. Wainwright, Church, McComas, & Underhill

HB 1962 – FRANCHISE TAX LOOPHOLE CLOSING – Rep. Luebke

HB 1963 – REVENUE LAWS TECH. & MOTOR FUEL TAX CHANGES – Rep. Luebke

HB 2048 – EXPANSION OF ROYALTY REPORTING OPTION – Rep. Luebke

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

I hereby certify this notice was filed by the committee clerk at the following offices at **11:15 am** on **May 22, 2006**:

X Principal Clerk
X Reading Clerk - House Chamber

Jason Cannon (Committee Clerk)

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

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

DAY & DATE: **Tuesday, May 23, 2006**

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

LOCATION: **Room 544, LOB**

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

HB 1891 – CLARIFY ADDITIONAL GROSS PREMIUMS TAX
– Reps. Wainwright, Luebke, Church, & Hill

HB 1892 – IRC UPDATE – Reps. Wainwright, Luebke, Carney, & Wilkins

HB 1898 – S CORP INCOME TAX ADJUSTMENTS – Rep. Wilkins

HB 1915 – SSTA SALES TAX DEFN/SALES TAX PAYMENTS – Rep. Hill

HB 1938 – AMEND TAXATION OF LOGGING MACHINERY
– Reps. Wainwright, Church, McComas, & Underhill

HB 1962 – FRANCHISE TAX LOOPHOLE CLOSING – Rep. Luebke

HB 1963 – REVENUE LAWS TECH. & MOTOR FUEL TAX CHANGES – Rep. Luebke

HB 2048 – EXPANSION OF ROYALTY REPORTING OPTION – Rep. Luebke

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

I hereby certify this notice was filed by the committee clerk at the following offices at **11:30 am** on **May 18, 2006**:

X Principal Clerk
X Reading Clerk - House Chamber

Jason Cannon (Committee Clerk)

ATTACHMENT 2

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — May 23, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Karl Knapp	NCDOR
Ryan Presley	Rep. Glazier
Henry Hutaff	N.C.B.A.
Greg Radford	NC DOR
Lennie Collins	DOR
Jeff Mixon	Civitas Institute
Chris Brown	NCFA
Susanne Streb	NCRA
FRANK FOLGER	Helms Mulliss Wicker
Nathan Kauffman	OSBM
Cameron Contizano	Daily Bulletin

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — May 23, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Cam Cowell	BPWHL
Sharon Miller	CUCA
Jim Blackburn	NC Association of County Commissioners
Jennie New	Kennedy Covington
Veronica Carrington	Rep. Wainwright Intern
Joe Stewart	IFNC
Jim Bell	NCMA

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — May 23, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jeff Van Dyke	BellSouth
Fran Preston	NCRMA
Lisa Martin	NC Home Builders
Elizabeth Dalton	NCRMA
Steve Woodson	NCFB
Betty Turner	Bank of America
Kathy Hawkins	PNG Energy
Paul Stock	NCBA
David Barnes	Poyner + Spruill
Connie Wilson	SSJ
Patrick Buffkin	Alley Assoc, INC.

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — May 23, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Marilyn Pastore	Union Co. Partnership for Children Monroe, NC
Phil Bazemore	City of Monroe - Mayor Pro Tem

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H **D**

HOUSE BILL 1898
PROPOSED COMMITTEE SUBSTITUTE H1898-CSSVx-66 [v.1]

5/18/2006 5:03:59 PM

Short Title: S Corp Income Tax Adjustments. (Public)

Sponsors:

Referred to:

May 11, 2006

A BILL TO BE ENTITLED

AN ACT TO MAKE CORPORATE INCOME TAX ADJUSTMENTS INAPPLICABLE TO S CORPORATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-131.2 reads as rewritten:

"**§ 105-131.2. Adjustment and characterization of income.**

(a) Adjustment. – ~~The pro rata share of each shareholder in the income attributable to the State of an S Corporation shall be adjusted as provided in G.S. 105-130.5. The pro rata share of each resident shareholder in the income not attributable to the State of an S Corporation shall be adjusted as provided in G.S. 105-134.6(b), (c), and (d).~~Each shareholder's pro rata share of an S Corporation's income is subject to the adjustments provided in G.S. 105-134.6.

(b) Repealed by Session Laws 1989, c. 728, s. 1.35.

(c) Characterization of Income. – S Corporation items of income, loss, deduction, and credit taken into account by a shareholder pursuant to G.S. 105-131.1(b) ~~shall be~~ are characterized as though received or incurred by the S Corporation and not its shareholder."

SECTION 2. G.S. 105-134.6(a) reads as rewritten:

"(a) S Corporations. – ~~The pro rata share of each shareholder in the income attributable to the State of an S Corporation shall be adjusted as provided in G.S. 105-130.5. The pro rata share of each resident shareholder in the income not attributable to the State of an S Corporation shall be~~ Each shareholder's pro rata share of an S Corporation's income is subject to the adjustments provided in ~~subsections (b), (c), and (d) of~~ this section."

SECTION 3. G.S. 105-134.6(c) is amended by adding a new subdivision to read:

. . .

(3a) The amount by which a shareholder's share of S Corporation income is reduced under section 1366(f)(2) of the Code for the taxable year by the amount of built-in gains tax imposed on the S Corporation under section 1374 of the Code.

..."

SECTION 4. This act is effective for tax years beginning on or after January 1, 2006.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 1898

Short Title:	S Corp Income Tax Adjustments.	(Public)
Sponsors:	Representatives Wilkins; Carney, Church, Hill, Luebke, McComas, and Wainwright.	
Referred to:	Finance.	

May 11, 2006

A BILL TO BE ENTITLED

AN ACT TO MAKE CORPORATE INCOME TAX ADJUSTMENTS INAPPLICABLE TO S CORPORATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-131.2 reads as rewritten:

"**§ 105-131.2. Adjustment and characterization of income.**

(a) Adjustment. – ~~The pro rata share of each shareholder in the income attributable to the State of an S Corporation shall be adjusted as provided in G.S. 105-130.5. The pro rata share of each resident shareholder in the income not attributable to the State of an S Corporation shall be adjusted as provided in G.S. 105-134.6(b), (c), and (d).~~Each shareholder's pro rata share of an S Corporation's income is subject to the adjustments provided in G.S. 105-134.6.

(b) Repealed by Session Laws 1989, c. 728, s. 1.35.

(c) Characterization of Income. – S Corporation items of income, loss, deduction, and credit taken into account by a shareholder pursuant to G.S. 105-131.1(b) ~~shall be~~ are characterized as though received or incurred by the S Corporation and not its shareholder."

SECTION 2. G.S. 105-134.6(a) reads as rewritten:

"(a) S Corporations. – ~~The pro rata share of each shareholder in the income attributable to the State of an S Corporation shall be adjusted as provided in G.S. 105-130.5. The pro rata share of each resident shareholder in the income not attributable to the State of an S Corporation shall be~~ Each shareholder's pro rata share of an S Corporation's income is subject to the adjustments provided in ~~subsections (b), (c), and (d) of~~ this section."

SECTION 3. This act is effective for tax years beginning on or after January 1, 2006.

HOUSE BILL 1898:
S Corp Income Tax Adjustments

BILL ANALYSIS

Committee:	House Finance	**Date:**	May 23, 2006
Introduced by:	Rep. Wilkins	**Summary by:**	Trina Griffin
Version:	PCS to First Edition H1898-CSSVx-66		Committee Counsel

SUMMARY: House Bill 1898 would make corporate income tax adjustments inapplicable to S Corporations, effective beginning with the 2006 taxable year, as recommended by the Revenue Laws Study Committee.

The PCS provides an exception by requiring an add-back in the amount by which a shareholder's share of S Corporation income is reduced by the amount of built-in gains tax imposed on the S Corporation.

CURRENT LAW: An S Corporation is a corporation that has elected to have the corporation's income pass through to the shareholders. Thus, the business profits are taxed at individual tax rates. An S Corporation election allows the shareholders to preserve the benefit of limited liability for the corporate form while at the same time being treated as partners for federal income tax purposes. The S Corporation itself does not pay any income tax, but an S Corporation is required to file an informational return with the IRS, similar to a partnership tax return, to inform the IRS of each shareholder's ownership interest in the S corporation. To be eligible for S Corporation status, a corporation must meet all of the following requirements:

- The corporation may have no more than 75 shareholders.
- The corporation may have only one class of stock, although different voting rights among shareholders are allowed.
- All shareholders must be individuals or trusts.
- The corporation must be formed in the United States.
- No shareholder may be a non-resident alien.
- The corporation may not be an insurance company or a domestic international sales corporation.

A C Corporation, on the other hand, assumes a separate legal and tax life distinct from its shareholders. A corporation pays taxes at its own corporate income tax rates and files its own corporate tax forms each year. C Corporations may choose to retain their profits and earnings as part of their operating capital, or they may choose to distribute some or all of their profits and earnings as dividends paid to shareholders. Dividends paid to shareholders are essentially taxed twice. They are taxed once at the corporate level and again at the individual level.

As noted above, C Corporations cannot be shareholders of an S Corporation. All shareholders must be individuals or trusts. Trusts, and obviously individuals, are subject to tax using the individual income tax rates. Thus, the tax imposed on the income of an S Corporation is an individual income tax, not a corporate tax. However, current law results in an individual's pro rata share of S Corporation income attributable to North Carolina being subject to corporate income tax adjustments, while S Corporation income not attributable to North Carolina is subject to individual income tax adjustments.

BILL ANALYSIS: This bill would make an individual's pro rata share of income from an S Corporation subject only to the individual income tax adjustments, rather than being subject to both individual and corporate income tax adjustments. This approach would be more consistent with the tax treatment of an S Corporation generally and would simplify tax form preparation. Consequently, it may result in a higher degree of compliance with the law.

PROPOSED COMMITTEE SUBSTITUTE: The Proposed Committee Substitute adds Section 3 to the bill, which would preserve an addition to federal taxable income for a shareholder's share of the built-in gains tax paid by the corporation at the federal level for purposes of determining State taxable income. This addition is required under current law.

Although S Corporations generally are not subject to tax, Section 1374 of the Internal Revenue Code imposes a corporate-level tax on S Corporations that dispose of assets that appreciated in value during years when the corporation was a C Corporation. Known as the "built-in gains tax," it applies only to assets that are disposed of within 10 years of the date S Corporation status is chosen. The shareholders of the S Corporation are also taxed on the gains. To provide some measure of relief from double taxation, each shareholder's share of income from the S Corporation is reduced by the shareholder's proportionate share of the built-in gains tax paid by the S Corporation [IRC Section 1366(f)(2)]. This tax is designed to prevent corporations that have unrecognized gain on assets during C years from converting to S status and then distributing the assets tax free.

North Carolina does not assess a built-in gains tax. Therefore, there is no double taxation at the State level and no reason to allow the deduction for the shareholder's share of the built-in gains tax. Currently, there is a corporate income tax provision requiring an add-back for the built-in gains tax deduction. Since the bill would subject S Corporations to individual income tax adjustments only, this bill needs to be modified to account for this adjustment. Therefore, the PCS would require an addition to federal taxable income for purposes of determining State taxable income for an amount by which a shareholder's share of S Corporation is reduced under Code section 1366(f)(2) by the amount of built-in gains tax imposed on the S Corporation.

EFFECTIVE DATE: This act would become effective for taxable years beginning on or after January 1, 2006.

H1898e1-SMSV-CSSVx-66

GENERAL ASSEMBLY OF NORTH CAROLINA
Session 2005

FISCAL ANALYSIS MEMORANDUM

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

DATE: May 22, 2006

TO: House Finance Committee

FROM: Dave Crotts
Fiscal Research Division

RE: House Bill 1898 (First Edition)
S Corporation Income Tax Adjustments

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:		See "Assumptions and Methodology"			
EXPENDITURES:					

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

EFFECTIVE DATE: Tax years beginning on or after January 1, 2006.

BILL SUMMARY: A C Corporation cannot be a shareholder of an S Corporation. All S shareholders must be individuals or trusts, which means that the taxpayer is subject to the individual income tax. However, current law results in an individual's pro rata share of S Corporation income attributable to North Carolina being subject to corporate income tax adjustments, while S Corporation income not attributable to North Carolina is subject to individual income tax adjustments. The proposal would make an individual's pro rata share of income from an S Corporation subject only to the individual income tax adjustments, rather than being subject

to both individual and corporate income tax adjustments. This approach would be more consistent with the tax treatment of an S Corporation generally and would simplify tax form preparation. Consequently, it may result in a higher degree of compliance with the law.

ASSUMPTIONS AND METHODOLOGY: The Department of Revenue indicates that the proposal would have a negligible revenue impact because many of the adjustments are duplicated in both individual and corporate income tax law and that some of the adjustments under the corporate income tax that are not under the individual income tax are not applicable to S corporation income tax. Thus, the change has limited application

SOURCES OF DATA: North Carolina Department of Revenue.

TECHNICAL CONSIDERATIONS: None

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☐ Committee Substitute for

HB 1898 A BILL TO BE ENTITLED AN ACT TO MAKE CORPORATE INCOME TAX ADJUSTMENTS INAPPLICABLE TO S CORPORATIONS.

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

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

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 1892

Short Title:	IRC Update.	(Public)
Sponsors:	Representatives Wainwright, Luebke, Carney, Wilkins (Primary Sponsors); Church and Hill.	
Referred to:	Finance.	

May 11, 2006

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE USED IN DEFINING AND DETERMINING CERTAIN STATE TAX PROVISIONS AND TO MAKE OTHER CHANGES TO MORE CLOSELY CONFORM TO FEDERAL TAX LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-228.90(b)(1b) reads as rewritten:

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

...

(1b) Code. – The Internal Revenue Code as enacted as of January 1, ~~2005,~~2006, including any provisions enacted as of that date which become effective either before or after that date."

SECTION 2. Notwithstanding Section 1 of this act, any amendments to the Internal Revenue Code enacted after January 1, 2005, that increase North Carolina taxable income for the 2005 taxable year become effective for taxable years beginning on or after January 1, 2006.

SECTION 3. G.S. 105-32.8 reads as rewritten:

"**§ 105-32.8. Federal determination that changes the amount of tax payable to the State.**

If the federal government corrects or otherwise determines the gross estate tax imposed under section 2001 of the Code or the amount of the maximum state death tax credit allowed an estate under section 2011 of the Code, the personal representative must, within ~~two years~~ six months after being notified of the correction or final determination by the federal government, file an estate tax return with the Secretary reflecting the correct amount of tax payable under this Article. If the federal government corrects or otherwise determines the amount of the maximum state generation-skipping transfer tax credit allowed under section 2604 of the Code, the person who made the transfer must, within ~~two years~~six months after being notified of the correction or final

determination by the federal government, file a tax return with the Secretary reflecting the correct amount of tax payable under this Article.

The Secretary must assess and collect any additional tax due as provided in Article 9 of this Chapter and must refund any overpayment of tax as provided in Article 9 of this Chapter. A person who fails to report a federal correction or determination in accordance with this section forfeits the right to any refund due by reason of the determination."

SECTION 4. G.S. 105-130.20 reads as rewritten:

"**§ 105-130.20. Federal corrections.**

If a taxpayer's federal taxable income is corrected or otherwise determined by the federal government, the taxpayer must, within ~~two years~~six months after being notified of the correction or final determination by the federal government, file an income tax return with the Secretary reflecting the corrected or determined taxable income. The Secretary shall determine from all available evidence the taxpayer's correct tax liability for the income year. As used in this section, the term 'all available evidence' means evidence of any kind that becomes available to the Secretary from any source, whether or not the evidence was considered in the federal correction or determination.

The Secretary shall assess and collect any additional tax due from the taxpayer as provided in Article 9 of this Chapter. The Secretary shall refund any overpayment of tax as provided in Article 9 of this Chapter. A taxpayer that fails to comply with this section is subject to the penalties in G.S. 105-236 and forfeits its rights to any refund due by reason of the determination."

SECTION 5. G.S. 105-159 reads as rewritten:

"**§ 105-159. Federal corrections.**

If a taxpayer's federal taxable income is corrected or otherwise determined by the federal government, the taxpayer must, within ~~two years~~ six months after being notified of the correction or final determination by the federal government, file an income tax return with the Secretary reflecting the corrected or determined taxable income. The Secretary shall determine from all available evidence the taxpayer's correct tax liability for the taxable year. As used in this section, the term 'all available evidence' means evidence of any kind that becomes available to the Secretary from any source, whether or not the evidence was considered in the federal correction or determination.

The Secretary shall assess and collect any additional tax due from the taxpayer as provided in Article 9 of this Chapter. The Secretary shall refund any overpayment of tax as provided in Article 9 of this Chapter. A taxpayer who fails to comply with this section is subject to the penalties in G.S. 105-236 and forfeits the right to any refund due by reason of the determination."

SECTION 6. G.S. 105-197.1 reads as rewritten:

"**§ 105-197.1. Federal corrections.**

If the amount of a taxpayer's net gifts is corrected or otherwise determined by the federal government, the taxpayer must, within ~~two years~~ six months after being notified of the correction or final determination by the federal government, file a gift tax return with the Secretary of Revenue reflecting the corrected or determined net gifts. The Secretary of Revenue shall determine from all available evidence the taxpayer's correct

tax liability for the taxable year. As used in this section, the term 'all available evidence' means evidence of any kind that becomes available to the Secretary from any source, whether or not the evidence was considered in the federal correction or determination.

The Secretary shall assess and collect any additional tax due from the taxpayer as provided in Article 9 of this Chapter. The Secretary shall refund any overpayment of tax as provided in Article 9 of this Chapter. A taxpayer who fails to comply with this section is subject to the penalties in G.S. 105-236 and forfeits the right to any refund due by reason of the determination."

SECTION 7. G.S. 105-130.17 is amended by adding a new subsection to read:

"(g) A corporation that files a federal return pursuant to section 6072(c) of the Code shall file its return on or before the fifteenth day of the sixth month following the close of its income year."

SECTION 8. G.S. 105-155(a) reads as rewritten:

"(a) ~~Where and When to File.~~Return. – An income tax return shall be filed ~~as prescribed by the Secretary~~ at the place and in the form prescribed by the Secretary. The income tax return of every taxpayer reporting on a calendar year basis ~~shall be filed~~is due on or before the fifteenth day of April in each ~~year, and the~~year. The income tax return of every taxpayer reporting on a fiscal year basis ~~shall be filed~~is due on or before the fifteenth day of the fourth month following the close of the fiscal year. These dates do not apply to a nonresident alien whose federal income tax return is due at a later date under section 6072(c) of the Code. The return of a nonresident alien affected by that Code section is due on or before the fifteenth day of the sixth month following the close of the taxable year. An information return shall be filed at the times prescribed by the Secretary. A taxpayer may ask the Secretary for an extension of time to file a return under G.S. 105-263."

SECTION 9. G.S. 105-151.11(b) reads as rewritten:

"(b) Employment Related Expenses. – The amount of employment-related expenses for which a credit may be claimed may not exceed ~~two thousand four hundred dollars ($2,400)~~three thousand dollars ($3,000) if the taxpayer's household includes one qualifying individual, as defined in section 21(b)(1) of the Code, and may not exceed ~~four thousand eight hundred dollars ($4,800)~~ six thousand dollars ($6,000) if the taxpayer's household includes more than one qualifying individual. The amount of employment-related expenses for which a credit may be claimed is reduced by the amount of employer-provided dependent care assistance excluded from gross income."

SECTION 10. Sections 1, 2, and 10 of this act are effective when they become law. Sections 3 through 6 of this act become effective July 1, 2006, and apply to federal determinations made on or after that date. Sections 7 through 9 of this act are effective for taxable years beginning on or after January 1, 2006.

HOUSE BILL 1892: IRC Update

BILL ANALYSIS

Committee:	House Finance	**Date:**	May 23, 2006
Introduced by:	Reps. Wainwright, Luebke, Carney, Wilkins	**Summary by:**	Martha Walston
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 1892 would update the reference to the Internal Revenue Code used in defining and determining certain State tax provisions. In addition the bill would shorten the time span which a taxpayer would have to file an amended estate, income, or gift tax return when the federal government corrects or otherwise determines the amount on which the tax is based. The bill also conforms the filing date for income tax returns for a nonresident alien to the federal dates. Finally, the bill would conform the amounts for the credit for child care and certain employment-related expenses to the amounts allowed for the corresponding federal credit.

House Bill 1892 is a recommendation of the Revenue Laws Study Committee.

CURRENT LAW: Currently the reference date for the Internal Revenue Code is January 1, 2005.

When the federal government corrects or otherwise determines the amount on which an estate, income, or gift tax is based, the taxpayer must file a State return within 2 years that reflects that change.

Nonresidents aliens are currently required to file State income tax returns before their federal returns are due.

Currently, the credit for child care and certain employment-related expenses may not be based on expenses in excess of $2,400 if the household includes one qualifying individual or $4,800 if the household includes more than one qualifying individual.

BILL ANALYSIS:

IRC Update

North Carolina's tax law tracks many provisions of the federal Internal Revenue Code by reference to the Code.[1] The General Assembly determines each year whether to update its reference to the Internal Revenue Code.[2] Updating the Internal Revenue Code reference makes recent amendments to the Code applicable to the State to the extent that State law tracks federal law. The General Assembly's decision whether to conform to federal changes is based on the fiscal, practical, and policy implications of the federal changes and is normally enacted in the following year, rather than in the same year the federal changes are made. This bill would change the reference date from January 1, 2005, to January 1, 2006, effective when the bill becomes law.

---

[1] North Carolina first began referencing the Internal Revenue Code in 1967, the year it changed its taxation of corporate income to a percentage of federal taxable income.

[2] The North Carolina Constitution imposes an obstacle to a statute that automatically adopts any changes in federal tax law. Article V, Section 2(1) of the Constitution provides in pertinent part that the "power of taxation ... shall never be surrendered, suspended, or contracted away." Relying on this provision, the North Carolina court decisions on delegation of legislative power to administrative agencies, and an analysis of the few federal cases on this issue, the Attorney General's Office concluded in a memorandum issued in 1977 to the Director of the Tax Research Division of the Department of Revenue that a "statute which adopts by reference future amendments to the Internal Revenue Code would ... be invalidated as an unconstitutional delegation of legislative power."

Between January 1, 2005, and January 1, 2006, there were four major pieces of federal legislation that made changes to the Internal Revenue Code. This federal legislation includes the Energy Tax Incentive Act of 2005 (P.L. 109-58) signed into law on August 8, 2005, the SAFE Transportation Equity Act of 2005 (P.L. 109-59) signed into law on August 10, 2005, the Katrina Emergency Tax Relief Act of 2005 (P.L. 109-73) signed into law on September 23, 2005, and the Gulf Opportunity Zone Act of 2005 (P.L. 109-135) signed into law on December 21, 2005.

Energy Tax Incentive Act of 2005 (P.L. 109-58) (hereinafter Energy Act)

Many of the changes made in this act involve tax credits for various activities. Because they are tax credits, these provisions do not have a direct impact at the State level. There are, however, several provisions that could have an impact at the State level, most of which involve the depreciation, amortization, or expensing of certain items.

- *Elimination of deduction for clean-fuel vehicles.* Under previous law, a taxpayer was allowed a deduction for the purchase of a qualified clean-fuel vehicle. A "qualified clean-fuel vehicle" is any motor vehicle that may be propelled by a clean-burning fuel such as natural gas, liquefied natural gas, liquefied petroleum gas, hydrogen, electricity, or any other fuel at least 85% of which is methanol, ethanol, or other alcohol or ether. The maximum amount of the deduction varied depending on the type of vehicle purchased. The deduction began to be phased out in 2004, and was set to be eliminated after the 2006 taxable year. This act moves up the phase-out so that the deduction is eliminated after the 2005 taxable year. In place of the deduction, this act creates a new federal credit for alternative fuel motor vehicles.

- *Tax deferral for gains on electric transmission assets.* Under current law, a taxpayer may elect to recognize qualified gain from a qualifying electric transmission transaction over an eight-year period. In order for a transaction to be a "qualifying electric transmission transaction" numerous conditions must be satisfied, one of which is that the transaction must be completed before January 1, 2007. This act extends that date by one year to January 1, 2008.

- *Deduction for nuclear decommissioning costs.* Utilities that own or operate a nuclear power plant are required by law to decommission the plant at the end of its useful life. A utility may elect to deduct contributions it makes to a nuclear decommissioning reserve fund established to help pay the costs associated with the eventual decommissioning. For previous tax years, contributions to such a reserve fund were limited to the lesser of the amount of nuclear decommission costs allocable to the fund that is included in the taxpayer's cost of services for ratemaking purposes for the taxable year and the ruling amount. The "ruling amount" is a schedule obtained from the IRS that specifies the annual payments that must be made into the fund to cover the amount of the decommission costs allocable to the fund over its existence. This act eliminates the "lesser of" test for taxable years beginning on or after January 1, 2006, and instead limits the deduction to the ruling amount.

- *Energy efficient commercial buildings property deduction.* Despite the fact that large commercial buildings use approximately one-fourth of the electrical energy consumed in the nation, there is currently no federal tax incentive to encourage the use of energy-efficient property in the construction or renovation of commercial buildings. This act allows taxpayers to claim a deduction (as opposed to depreciation or amortization) with respect to costs associated with energy-efficient commercial building property placed into service

between January 1, 2006, and January 1, 2008. The maximum amount that may be deducted is $1.80 per square foot of the building, less any amount deducted under this provision with respect to the same building in previous tax years. In order to qualify for the deduction, the following conditions must be satisfied: 1) The costs must be associated with depreciable or amortizable property that is installed in a commercial building that meets certain standards for energy efficiency; 2) The property is installed as part of the interior lighting, heating, cooling, ventilation, or hot water systems or the building envelope; and 3) The property is installed as part of a plan to reduce the total annual energy costs of the building with respect to the interior lighting, heating, cooling, ventilation, and hot water systems by at least 50% as compared to a similar building that meets certain minimum standards for energy efficiency. The IRS is required to issue regulations relating to eligibility for a partial deduction and to the transfer of a deduction from a public entity (like the State) to the person responsible for designing the property.

- *Recapture of section 197 amortization.* Generally, property subject to amortization under section 197 of the Code is intangible property that is purchased and held by a taxpayer in the course of a business. Section 197 property includes goodwill, covenants not to compete, patents, copyrights, trademarks and certain licenses. The cost of section 197 property is recoverable over fifteen years using straight-line depreciation. Under general rules, gain on the sale of depreciable property must be recaptured as ordinary income to the extent of depreciation deductions previously claimed. Under general rules, the recapture amount is computed separately for each piece of property. This act provides that if multiple pieces of section 197 property are sold or disposed of in a single transaction or series of transactions, then the taxpayer must compute the recapture as if all of the property were a single asset. The effect of this change is to maximize the amount of income treated as recapture, and thus as ordinary income, and to lessen the amount treated as a capital gain, which is taxed at a lower rate.

- *Depreciation of electric transmission property.* Generally, under the modified accelerated cost recovery system (MACRS) assets used in the transmission and distribution of electricity for sale have a 20-year recovery period. This act allows the costs of certain electric transmission property placed into service after April 11, 2005, to be recovered over 15 years instead of 20.

- *Expensing liquid fuel refineries.* Under previous law, petroleum refining assets were depreciated over a 10-year recovery period using the double declining balance method. Petroleum refining assets are assets used for distillation, fractionation, and catalytic cracking of crude petroleum into gasoline and other petroleum products. This acts allows a taxpayer to make an election to expense 50% of the cost of qualified refinery property in the year in which the property is placed into service. "Qualified refinery property" includes any portion of a qualified refinery that satisfies the following conditions: 1) The original use of the property commences with the taxpayer; 2) The property is placed in service between August 8, 2005, and January 1, 2012; 3) The property satisfies certain production capacity requirements; 4) The property satisfies all applicable environmental laws in effect when it is placed into service; 5) No written binding contract for the construction of the property was in effect on or before June 14, 2005; and 6) The construction of the property is subject to a written binding contract entered into before January 1, 2008. A "qualified refinery" is one that is located in the United States and that is designed to serve the primary purpose of processing liquid fuel from crude oil or qualified fuels (including shale and tar sands and coal

seams). The expensing election is not available with respect to a refinery that is used primarily as a topping plant, asphalt plant, lube oil facility, crude or product terminal, or blending facility.

- *Depreciation of natural gas distribution lines.* Under previous law, natural gas distribution lines installed by a gas company were depreciated over a 20-year period. This act allows natural gas depreciation lines placed in service between April 11, 2005, and January 1, 2011, to be depreciated over a 15-year period.
- *Depreciation of natural gas gathering pipelines.* Prior to the enactment of this act, there was a disagreement among the courts as to what asset class natural gas gathering pipelines owned by a nonproducer belonged. The IRS maintained, and this position was supported by the Tax Court, that these pipelines belonged to an asset class subject to depreciation over 15 years. The Courts of Appeals in the Sixth, Eighth, and Tenth Circuits, however, held that these pipelines belonged to an asset class subject to depreciation over 7 years. There was agreement that natural gas gathering pipelines owned by a producer were part of the asset class subject to depreciation over 7 years. This act clarifies that all natural gas gathering pipelines, regardless of ownership, are subject to depreciation over 7 years. This provision applies to natural gas gathering pipelines placed in service after April 11, 2005.
- *Geological and geophysical costs amortized over two years.* Geological and geophysical costs are those incurred for the purpose of accumulating data that serves as the basis for the decision about acquisition or retention of mineral rights by taxpayers in the business of exploring for minerals (including gas and oil). Courts have held these costs to be capital in nature and allocable to the property acquired or retained. If no property was acquired or retained, the costs were treated as a capital loss. This act provides that these costs, when incurred in the United States for oil or gas exploration, shall be amortized ratably over a 24-month period beginning on the mid-point of the taxable year in which the costs were incurred. The act does not affect the treatment of costs incurred outside of the United States or with respect to exploration for minerals other than oil or gas.
- *84-month amortization of air pollution control facilities.* Current law allows taxpayers to amortize a certified pollution control facility used in connection with a plant that was in operation before January 1, 1976, over a 60-month period. For certified pollution control facilities placed in service after April 11, 2005, this act eliminates the requirement that the property be used in connection with a plant that was in operation before 1976 if the plant is an electric generation plant that is primarily coal fired. For property that satisfies this criteria, the amortization period is 84-months. The act does not lengthen the amortization period for property that was covered by previous law, it provides a favored, though not as generously favored, method of depreciation for another class of property.

Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005 (P.L. 109-59) (hereinafter SAFE Act)

Although this act makes numerous tax changes at the federal level, these changes have little to no direct impact at the State level

Katrina Emergency Tax Relief Act of 2005 (P.L. 109-73) (hereinafter Katrina Act)

2005 was a record-setting year on the meteorological front. Not only did the year see a record number of named storms (27) and a record number of hurricanes (14), the year also included the costliest Atlantic hurricane on record and one of the deadliest, Hurricane Katrina. Hurricane Katrina made

landfall along the Gulf Coast on August 29, 2005, as a Category 4 storm. Hurricane Katrina resulted in the deaths of more than 1,400 people and caused over $80 billion in property damage.

In the aftermath of Hurricane Katrina, Congress took action to assist taxpayers in the affected region. On September 21, 2005, Congress passed the Katrina Emergency Tax Relief Act of 2005, which was signed into law by President Bush on September 23, 2005. The act is a collection of tax relief provisions for individuals and businesses. Below, the key provisions of this act that could have an impact on State revenues are summarized.

General Provisions. The act contains definitions of several key phrases that are used throughout the act. Under the act, "Hurricane Katrina disaster area" means an area with respect to which a major disaster has been declared by the President before September 14, 2005, with respect to Hurricane Katrina. The states of Alabama, Florida, Louisiana, and Mississippi comprise the Hurricane Katrina disaster area. The act also defines the term "core disaster area." The core disaster area is a subset of the Hurricane Katrina disaster area that has been determined by the President to warrant individual or individual and public assistance from the federal government. The core disaster area covers certain counties and parishes in Alabama, Louisiana, and Mississippi.

Retirement Funds. The act contains a number of special rules related to retirement funds for people who lived in the Hurricane Katrina disaster area or the core disaster area. Generally, these provisions allow for a more liberal use of retirement funds for emergency needs than would otherwise be allowed without subjecting the taxpayer to some sort of penalty or disincentive. These provisions include the following:

- *Tax favored withdrawals from retirement plans for relief relating to Hurricane Katrina.* Generally, a withdrawal from a qualified retirement plan, a tax-sheltered annuity, an IRA, or an eligible deferred compensation plan maintained by a state or local government is included in taxable income in the year in which it is made. In addition, a distribution that is received before death, disability, or the age of 59 ½ is generally subject to a 10% early withdrawal tax. Some distributions are known as eligible rollover distributions and are not included in taxable income or subject to the 10% penalty tax. These distributions must be rolled over into another qualified retirement account within 60 days.

  This act provides an exception to the 10% early withdrawal tax in the case of a qualified Hurricane Katrina distribution[3] from a qualified retirement plan, tax-sheltered annuity, or IRA. In addition, any amount required to be included in income as a result of a qualified Hurricane Katrina distribution is included in income in installments over the three-year period beginning with the year in which the distribution is made rather than entirely within the year that the distribution is made. Finally, any amount of a qualified Hurricane Katrina distribution that is recontributed to an eligible retirement account within the three-year period is treated as a roll-over distribution and is not included in income.

- *Recontribution of withdrawals for home purchases cancelled due to Hurricane Katrina.* There is an exception to the 10% early withdrawal tax discussed above in the case of a qualified first-time homebuyer distribution from an eligible retirement account. A qualified first-time homebuyer distribution is one that does not exceed $10,000 and that is used within 120 days of the distribution for the purchase or construction of a principal residence of a

[3] A "qualified Hurricane Katrina distribution" is a distribution made from an eligible retirement plan on or after August 25, 2005, and before January 1, 2007, to an individual whose primary place of abode on August 28, 2005, is located in the Hurricane Katrina disaster area and who has sustained an economic loss due to Hurricane Katrina. The total amount of qualified Hurricane Katrina distributions to a taxpayer from all accounts may not exceed $100,000.

first-time homebuyer. If the distribution is not used for the purchase of the home within 120 days or is not rolled over into an eligible retirement account within 60 days, the distribution is included in income and is subject to the 10% early withdrawal tax.

This act allows a taxpayer that received a qualified distribution from a retirement account to recontribute that amount to an eligible retirement account without penalty. For the purposes of this provision, a "qualified distribution" is a distribution that was received after February 28, 2005, and before August 29, 2005, and that was to be used to purchase or construct a principal residence in the Hurricane Katrina disaster area, but the residence is not purchased or constructed because of Hurricane Katrina. Any portion of a qualified distribution may be contributed to an eligible retirement account and treated as a roll-over if it is recontributed between August 25, 2005, and February 28, 2006. Because it is treated as a roll-over, that portion will not be included in income or subject to the 10% early withdrawal tax.

- *Loans from qualified plans for relief relating to Hurricane Katrina.* An individual is allowed to borrow from a qualified employer plan in which the individual participates provided the loan satisfies certain conditions. Generally, a loan from a qualified employer plan is treated as a taxable distribution of plan benefits. A loan is not treated as a tax distribution of benefits to the extent that the loan, when added to the outstanding balance of all other loans to the individual from all plans maintained by the employer, does not exceed the lesser of 1) $50,000 reduced by the excess of the highest outstanding balance of loans from such plans during the one-year period ending on the day before the date the loan is made over the outstanding balance of loans from the plan on the date the loan is made or 2) the greater of $10,000 or one half the individual's accrued benefit under the plan. For this exception to apply, the loan must have a repayment period of five years or less, must be amortized in level payments, and must have payments due at least quarterly.

  This act provides special rules in the case of a loan from a qualified plan to a qualified individual. For the purposes of this provision, a "qualified individual" is one whose principal place of abode on August 28, 2005, is located in the Hurricane Katrina disaster area and who has sustained an economic loss because of Hurricane Katrina. Under this provision, the loan limit discussed above is increased to the lesser of 1) $100,000 reduced by the excess of the highest outstanding balance of loans from such plans during the one-year period ending on the day before the date the loan is made over the outstanding balance of loans from the plan on the date the loan is made or 2) the greater of $10,000 or the individual's accrued benefit under the plan.

  In addition, this act provides that in the case of a qualified individual with an outstanding loan from a qualified plan on or after August 25, 2005, if the due date for any repayment with respect to the loan occurs during the period from August 25, 2005, to December 31, 2006, the due date is delayed for one year.

Charitable Giving Incentives. In the wake of Hurricane Katrina, people from around the nation rushed to the aid of people in the affected areas with unprecedented amounts of charitable giving. As part of this act, Congress further encouraged and rewarded charitable giving.

- *Temporary suspension of limitations on charitable contributions.* In general, the income tax deduction allowed for charitable contributions is subject to limitations based on the type of taxpayer, the property contributed, and the donee organization. Subject to certain limitations, discussed further below, the following general rules apply: 1) Contributions of cash are

deductible in the amount contributed; 2) Contributions of capital gain property[4] to a qualified charity are deductible at fair market value; 3) Contributions of other appreciated property are deductible at the donor's basis in the property; and 4) Contributions of depreciated property are deductible at the fair market value of the property.

Most contributions are subject to percentage limitations. For individuals, the amount deductible is limited to a percentage of the taxpayer's contribution base[5]. The percentage varies depending on the type of donee organization and the type of property contributed. Contributions by an individual of property other than appreciated capital gain property to a charitable organization described in section 170(b)(1)(A) of the Code (public charities, private foundations other than private non-operating foundations, and certain governmental units) are deductible up to 50% of the contribution base. Contributions of this type of property to nonoperating private foundations and certain other organizations are deductible up to 30% of the contribution base. Contributions of appreciated capital gain property to an organization described in section 170(b)(1)(A) of the Code are generally deductible up to 30% of the contribution base. A taxpayer may elect to bring all of these contributions of appreciated capital gain property under the 50% limitation by reducing the amount of the deduction by the amount of the appreciation of the property. Contributions of appreciated capital gains property to a private nonoperating foundation are deductible up to 20% of the contribution base. For corporations, charitable contributions are deductible up to 10% of the corporations taxable income computed without regard to net operating loss or capital loss carrybacks. For both individuals and corporations, excess charitable contributions may be carried forward for up to five years.

There is also an overall limitation on most itemized deductions for individuals. The total amount of otherwise allowable itemized deductions is reduced by three percent of the amount of the taxpayer adjusted gross income in excess of a certain threshold. However, the otherwise allowed deductions may not be reduced by more than 80%. This reduction is reduced to two percent for the 2006 and 2007 taxable years and to one percent for the 2008 and 2009 taxable years, is repealed for the 2010 taxable year, and is reinstated for the 2011 taxable year.

This act provides several exceptions to the limitations on charitable contribution deductions. For individuals, the deduction for qualified contributions is allowed up to the amount by which the taxpayer's contribution base exceeds the taxpayer's deductions for other charitable contributions. In most cases, this means that an individual may deduct charitable contributions up to 100% of the taxpayer's adjusted gross income computed without regard to any net operating loss carryback. For corporations, the deduction for a qualified contribution is allowed up to amount by which the corporation's taxable income exceeds the deduction for other charitable contributions. For the purposes of these provisions, a "qualified contribution" is a cash contribution that is made between August 28, 2005, and December 31, 2005, to an organization described in section 170(b)(1)(A) of the Code. The term does not include a contribution of noncash property or one that is for the establishment or maintenance of a segregated fund or account with respect to which the donor reasonably expects to have advisory privileges with respect to the fund or account because of his status as donor. In the

[4] "Capital gain property" means any capital asset or property used in the taxpayer's trade or business the sale which at its fair market value, at the time of contribution, would have resulted in a gain that would have been a long-term capital gain.
[5] The "contribution base" is the taxpayer's adjusted gross income computed without regard to any net operating loss carryback.

case of a corporation, the contribution must be for relief efforts related to Hurricane Katrina in order to be a qualified contribution.

In addition, for individuals the charitable deduction contribution, up to the amount of qualified contributions, is not treated as an itemized deduction and is not subject to the reduction for higher-income taxpayers.

- *Additional exemption for housing Hurricane Katrina displaced individuals.* In the aftermath of Hurricane Katrina, hundreds of thousands of residents of the affected areas were displaced. During this time of displacement, many individuals opened their homes to those who had been displaced. Generally, individuals are allowed personal exemptions in computing taxable income. Personal exemptions are allowed for the taxpayer, the taxpayer's spouse, and the taxpayer's dependents. Personal exemptions are phased out for higher-income taxpayers.

  This act allowed a taxpayer an additional $500 exemption for each Hurricane Katrina displaced individual of the taxpayer, up to a maximum additional exemption of $2,000. The additional exemption is not subject to the phase out for higher-income taxpayers. For the purposes of this provision, a "Hurricane Katrina displaced individual" is a person 1) whose principal place of abode on August 28, 2005, was in the Hurricane Katrina disaster area, 2) who was displaced from the abode, 3) who is provided housing free of charge in the taxpayer's principal place residence for a period of 60 consecutive days that ends in the taxable year in which the exemption is claimed, and 4) is not the spouse or dependent of the taxpayer. For a person whose principal place of abode on August 28, 2005, was outside of the core disaster area, the person's abode must have been damaged by Hurricane Katrina or the person must have been evacuated from the abode by reason of Hurricane Katrina.

- *Increase in standard mileage rate for charitable use of vehicles.* In determining the amount of the charitable contribution deduction when a taxpayer operates a vehicle in providing donated services to a charity, the taxpayer may either deduct actual operating expenditures or use the charitable standard mileage rate. The charitable standard mileage rate, 14 cents per mile, is significantly less than the business standard mileage rate[6]. The charitable rate is less than the business rate because it is meant to offset direct operating expenses, such as gas, only and not other expenses, such as a depreciation, insurance, or general maintenance.

  This act allows a taxpayer who uses a vehicle in providing donated service to charity for Hurricane Katrina relief only to compute the charitable mileage deduction at a rate equal to 70% of the business standard mileage rate, rounded to the next highest cent, on the date of the contribution. In the alternative, the taxpayer may continue to use actual operating expenditures to determine the amount of the deduction.

- *Mileage reimbursement to charitable volunteers excluded from gross income.* Volunteer drivers who are reimbursed for mileage expenses have taxable income to the extent that the reimbursement exceeds deductible expenses computed using either direct expenses or the charitable standard mileage rate. Under this act, reimbursement for mileage expenses by a charitable organization described in section 170(c) of the Code to a volunteer for the costs of using a passenger vehicle for Hurricane Katrina relief only are not included in income to the

[6] For expenses incurred between January 1, 2005, and September 1, 2005, the standard business mileage rate was 40.5 cents per mile. For expenses incurred between September 1, 2005, and January 1, 2006, the standard business mileage rate was 48.5 cents per mile.

extent that the reimbursement does not exceed the amount that would be allowed using the business standard mileage rate. A taxpayer may not claim a deduction or credit for amounts excluded under this provision.

- *Charitable deduction for contribution of food inventories.* A taxpayer's deduction for charitable contributions of inventory is generally limited to the lesser of the taxpayer's basis in the inventory (usually cost) or the fair market value of the inventory. For certain contributions of inventory, a C corporation may claim an enhanced deduction equal to the lesser of 1) basis plus one-half on the item's appreciation or 2) two times basis. To be eligible for the enhanced deduction, the contributed property must generally be inventory of the corporation, contributed to a charitable organization described in section 501(c)(3) of the Code, and the donee must 1) use the property consistent with the donee's exempt purpose only for the care of the ill, the needy, or infants, 2) not transfer the property in exchange for money, other property, or services, and 3) provide the taxpayer with a written statement attesting to the proper use of the property.

  This act allows the enhanced deduction to any taxpayer engaged in a trade or business that makes a donation of food inventory. For taxpayers other than C corporations, the total deduction for contributions of food inventory may not exceed 10% of the taxpayer's income from all business entities from which a contribution of food inventory is made. The enhanced deduction is available only for food that qualifies as "apparently wholesome food," – food intended for human consumption that meets all quality and labeling standards imposed by federal, state, and local laws even though the food may not be readily marketable for any number of reasons.

- *Charitable deduction for contribution of book inventories.* A taxpayer's deduction for charitable contributions of inventory is generally limited to the lesser of the taxpayer's basis in the inventory (usually cost) or the fair market value of the inventory. For certain contributions of inventory, a C corporation may claim an enhanced deduction equal to the lesser of 1) basis plus one-half on the item's appreciation or 2) two times basis. To be eligible for the enhanced deduction, the contributed property must generally be inventory of the corporation, contributed to a charitable organization described in section 501(c)(3) of the Code, and the donee must 1) use the property consistent with the donee's exempt purpose only for the care of the ill, the needy, or infants, 2) not transfer the property in exchange for money, other property, or services, and 3) provide the taxpayer with a written statement attesting to the proper use of the property.

  This act extends the enhanced deduction for C corporations to qualified book contributions. A "qualified book contribution" is a charitable contribution of books to a public school that provides elementary education or secondary education and that is an educational organization that normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils in attendance at the place where its education activities are regularly carried on.

Miscellaneous Provisions.

- *Exclusion for certain cancellations of indebtedness by reason of Hurricane Katrina.* Gross income includes income that is realized by a debtor for the discharge of indebtedness, subject to certain exceptions. This act provides that the gross income of a qualified individual does not include any amount which would otherwise by includible in gross income by reason of a

discharge of nonbusiness debt if the indebtedness is discharged by an applicable entity. The relief allowed under this provision does not apply to any indebtedness to the extent that real property outside of the Hurricane Katrina disaster area serves as security for the debts. For the purposes of this provision, a "qualified individual" is any natural person whose principal place of abode on August 25, 2005, was located 1) in the core disaster area or 2) in the Hurricane Katrina disaster area and the person suffered economic loss as a result of Hurricane Katrina. An "applicable entity" includes the following: a financial institution; a credit union; a corporation that is a direct or indirect subsidiary of a financial institution or credit union and as such is subject to regulation by federal or state agencies; the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, the National Credit Union Administration, and certain other federal executive agencies; an executive, judicial, or legislative agency; and any other organization for whom the lending of money is a significant trade or business.

- *Suspension of certain limitations on personal casualty losses.* A taxpayer may generally claim a deduction for any loss sustained during the taxable year for which he is not compensated by insurance or otherwise. For individuals, the loss must be incurred in a trade or business or consist of property loss attributable to casualty or theft. Losses are deductible only if they exceed $100 per casualty or theft and total casualty and theft losses exceed 10% of the taxpayer's adjusted gross income. This act removes the $100 and 10% limitations on casualty and theft losses to the extent those losses are in the Hurricane Katrina disaster area on or after August 25, 2005, and are attributable to Hurricane Katrina.

- *Required exercise of IRS administrative authority.* In general, the Secretary of the Treasury may grant reasonable extensions of time to taxpayers to perform certain acts. In addition, for certain military personnel, the time period for performing certain acts (such as filing returns, paying taxes, bringing suit) is automatically suspended. In the case of a Presidentially declared disaster or terroristic or military action, the Secretary has the authority to prescribe a period of up to one year in which the time period for the same actions is suspended. This act requires the Secretary to suspend those time periods at least until February 28, 2006, for taxpayers determined to have been affected by the Presidentially declared disaster relating to Hurricane Katrina. In addition, this act adds employment and excise taxes to the list of taxes for which the Secretary may extend filing and payment time periods.

- *Special rules for mortgage revenue bonds.* A qualified mortgage bond is a type of private activity bonds for which interest is excluded from gross income. Qualified mortgage bonds are issued to make mortgage loans to qualified mortgagors for the purchase, improvement, or rehabilitation of owner-occupied residences and to finance qualified home improvement loans. There are several limitations on qualified mortgage bonds, including income limitations for homebuyers, purchase price limitations, and the requirement that the mortgagor be a "first-time homebuyer" – one that did not have any ownership interest in a primary residence for the previous three years. The first-time home buyer requirement does not apply to targeted area residences – one that is located in an area of chronic economic distress or a census tract in which at least 70% of the families have an income that is 80% or less of the statewide median income. A qualified home improvement loan may not exceed $15,000.

  This act eliminates the first-time homebuyer requirement with respect to qualified Hurricane Katrina recovery residences. A "qualified Hurricane Katrina recovery residence" is one that

is financed before January 1, 2008, and is either 1) located in the core disaster area or 2) the mortgagor of which owned a principal residence in the Hurricane Katrina disaster area that was rendered uninhabitable by Hurricane Katrina and the residence financed is in the same state as the previous residence.

The act also increases the maximum amount of a qualified home improvement loan to $150,000 for residences located in the Hurricane Katrina disaster area to the extent that the loan is for repair of damage caused by Hurricane Katrina.

- *Extension of replacement period for nonrecognition of gain.* A taxpayer generally realizes gain to the extent the sales price of property exceeds the taxpayer's basis in the property. The realized gain is subject to taxation unless it is deferred or not recognized under some special provision. Gain realized by a taxpayer from an involuntary conversion of property is deferred to the extent the taxpayer replaces the property within the applicable period. The applicable period begins when property is converted and ends two years after the close of the first taxable year in which the gain is realized.

  This act extends the applicable period from two years to five years for property that is located within the Hurricane Katrina disaster area that is compulsorily or involuntarily converted after August 25, 2005, by reason of Hurricane Katrina. Substantially all of the use of the replacement property must be in this area for this provision to apply.

- *Secretarial authority to make adjustments regarding taxpayer and dependency status for taxpayers affected by Hurricane Katrina.* This provision allows the Secretary of the Treasury to make adjustments to the tax laws to ensure that taxpayers do not lose eligibility for credits or deductions or experience a change in filing status due to temporary relocations caused by Hurricane Katrina. An example of such an adjustment would be allowing a parent to claim a personal exemption for a child even if the child did not satisfy the residency requirement as a result of a relocation due to Hurricane Katrina. Any adjustment must ensure that an individual is not taken into account by more than one taxpayer with respect to the same benefit.

Gulf Opportunity Zone Act of 2005 (P.L. 109-135) (GO Act)

The Gulf Opportunity Zone Act of 2005 expanded upon the relief offered in the Katrina Emergency Tax Relief Act of 2005. In some instances, this expansion meant extending the additional benefits allowed under the Katrina Act to taxpayers affected by Hurricanes Rita or Wilma. In other cases, the expansion created new tax benefits for taxpayers in one or more of the disaster areas. The act also made numerous technical corrections.

General Provisions. First, the GO Zone Act added several new definitions. First, the "Gulf Opportunity Zone" or "GO Zone" is a subset of the Hurricane Katrina disaster area that has been determined by the President to warrant individual or individual and public assistance from the federal government and is the same as the "core disaster area" under the Katrina Act. The "Hurricane Rita disaster area" means an area with respect to which the President has declared a major disaster before October 6, 2005, with respect to Hurricane Rita. The "Hurricane Wilma disaster area" means an area with respect to which the President has declared a major disaster before November 14, 2005, with respect to Hurricane Wilma. The "Rita GO Zone" and "Wilma GO Zone" are, respectively, the portions of the Hurricane Rita disaster area and Hurricane Wilma disaster area that have been determined by the President to warrant individual or individual and public assistance from the federal government.

Extensions of Hurricane Katrina benefits. The GO Zone Act extended some of the benefits of the Katrina Act to areas affected by Hurricanes Rita and Wilma. The following changes fall into this category.

- *Retirement plans.* The specific provisions discussed under the Katrina Act were repealed and replaced with more general provisions relating to all of the hurricanes. The provisions under this act were substantively identical to those discussed under the Katrina Act with some timing differences related to the different dates of the three storms.
- *Casualty losses.* The specific provisions discussed under the Katrina Act were repealed and replaced with more general provisions relating to all of the hurricanes. The provisions under this act were substantively identical to that discussed under the Katrina Act with some timing differences related to the different dates of the three storms.
- *Secretarial authority to make adjustments.* The specific provisions discussed under the Katrina Act were repealed and replaced with more general provisions relating to all of the hurricanes. The provisions under this act were substantively identical to those discussed under the Katrina Act with some timing differences related to the different dates of the three storms.
- *Mortgage revenue bonds.* The first-time homebuyer requirement is eliminated for residences in the Rita GO Zone or the Wilma GO Zone. In addition, the increased maximum amount of a qualified home improvement loan is applied to residences in the Rita GO Zone and the Wilma GO Zone.

Housing relief for Hurricane Katrina. As discussed above, the Katrina Act provided some relief to individuals who provided housing for Hurricane Katrina evacuees. In this act, Congress provided further tax relief relating to housing expenditures. Employer-provided housing is generally included in income as a form of compensation. An exception to this general rule exists when an employee is required to accept the lodging on business premises as a condition of employment. This act provides that a qualified employee's gross income does not include the value of any in-kind lodging furnished to the employee, the employee's spouse, or the employee's dependents by or on behalf of the qualified employer. The exclusion applies only to lodging furnished during the six-month period beginning January 1, 2006 and may not exceed $600 for any month in which lodging is furnished. For the purposes of this provision, a "qualified employee" is an individual who on August 28, 2005, had a principal residence in the GO Zone and who performs substantially all of his or her employment services in the GO Zone for a qualified employer. For the purposes of this provision, a "qualified employer" is an employer with a trade or business located in the GO Zone.

Depreciation and expensing.

- *Bonus depreciation for Gulf Opportunity Zone property.* In 2002 and 2003, Congress acted to allow for bonus depreciation (either 30% or 50% depending on when the property was purchased) for property that was purchased after September 10, 2001. In order to qualify for the bonus depreciation, the property had to have been placed into service before January 1, 2005. For certain transportation property, noncommercial aircraft, or property with a long production period, the property must have been placed into service before January 1, 2006.

  This act allows a taxpayer to claim an additional first-year depreciation allowance equal to 50% of the adjusted basis of qualified Gulf Opportunity Zone property acquired on or after August 25, 2005, and placed into service before January 1, 2008 (the sunset date is January 1, 2009, for nonresidential real property and residential rental property). "Qualified Gulf

Opportunity Zone property must satisfy all of the following conditions: 1) It must be depreciable modified accelerated cost recovery systems (MACRS) recovery property with a recovery period of 20 years or less, MACRS water utility property, qualified leasehold improvement property, off-the-shelf computer software, residential rental property, or nonresidential real property; 2) Substantially all use of the property must be in the active conduct of a trade or business of the taxpayer in the GO Zone; 3) The original use of the property in the GO Zone must commence with the taxpayer on or after August 25, 2005; 4) The property must be purchased on or after August 25, 2005; 5) No written binding contract for the purchase of the property may be in effect before August 25, 2005; and 6) The property must be placed in service before January 1, 2008 (January 1, 2009 for nonresidential real property and residential rental property). The term does not include property that is 1) mandatory alternative depreciation system (ADS) property; 2) tax-exempt bond-financed property; 3) qualified revitalization buildings or rehabilitation expenditures for which a deduction under section 1400I of the Code is claimed; or 4) property used in connection with a private or commercial golf course, a country club, a massage parlor, a hot tub facility, a suntan facility, a liquor store, or a gambling or animal racing property.

In addition, this act allows the Secretary to extend the placed-in-service date for noncommercial aircraft and property with longer production periods for up to one year. This extension is granted on a case-by-case basis and may only be granted if the delay in placing the property into service was caused by one of the three hurricanes and the property is placed in service in the GO Zone, the Rita GO Zone, or the Wilma GO Zone.

- *Increase in limits on section 179 deductions.* Certain taxpayers may elect to claim a section 179 expense deduction on the cost of qualifying property rather than depreciating the property over time. For the 2003 through 2007 tax years, the maximum amount of the deduction is limited to $100,000, indexed for inflation.[7] This limitation is increased by $35,000 for property that is placed in service in the New York Liberty Zone, an empowerment zone, or a renewal community. The amount of the section 179 deduction is reduced to the extent that the total amount of property placed into service exceeds an investment threshold, currently set at $400,000, indexed for inflation.[8] The section 179 deduction may not exceed a taxpayer's taxable income from the active conduct of a trade or business.

  This act increases the maximum section 179 deduction for qualified GO Zone property by the lesser of $100,000 or the amount of property placed into service in the GO Zone. In addition it increases the total investment limitation by the lesser of $600,000 or the amount of property placed into service in the GO Zone. The increased amounts apply to property acquired on or after August 25, 2005, and placed into service before January 1, 2008. "Qualified GO Zone property" must satisfy all of the following conditions: 1) It must be depreciable modified accelerated cost recovery systems (MACRS) recovery property with a recovery period of 20 years or less; 2) Substantially all use of the property must be in the active conduct of a trade or business of the taxpayer in the GO Zone; 3) The original use of the property in the GO Zone must commence with the taxpayer on or after August 25, 2005; 4) The property must be purchased on or after August 25, 2005; 5) No written binding contract for the purchase of the property may be in effect before August 25, 2005; and 6) The

[7] The adjusted dollar limitation is $105,000 for 2005 and $108,000 for 2006.
[8] The adjusted investment limitation is $420,000 for 2005 and $430,000 for 2006.

property must be placed in service before January 1, 2008. The term does not include property used in connection with a private or commercial golf course, a country club, a massage parlor, a hot tub facility, a suntan facility, a liquor store, or a gambling or animal racing property.

- *Deduction for demolition and clean-up costs.* Under general law, demolition costs are capitalized and added to the basis of the land on which the demolished building was located. The tax treatment of debris removal costs depends on the nature of the costs incurred. Debris removal costs that are in the nature of replacement must be capitalized and added to the basis of the property damaged. Other times, debris removal costs may be used to show a decrease in the fair market value of property which could be used to determine the amount of a casualty loss. This act allows a taxpayer to claim a current deduction for 50% of any qualified Gulf Opportunity Zone clean-up costs paid between August 25, 2005, and January 1, 2008. For the purposes of this provision, a "qualified Gulf Opportunity Zone clean-up cost" is an amount paid for the removal of debris, or the demolition of structures, on real property located in the GO Zone if the real property is either held by the taxpayer for use in a trade or business or is inventory in the hands of the taxpayer.

- *Environmental remediation costs.* Under previous law, a taxpayer may elect to deduct, rather than capitalize, certain environmental remediation expenditures incurred in connection with property used in a trade or business for the production of income. This provision expired for expenditures incurred after December 31, 2005. This act extends the expiration date for that provision until December 31, 2007 for qualified environmental remediation expenditures incurred in connection with a qualified site in the GO Zone. In addition, expenditures incurred on or after August 25, 2005, with respect to petroleum products in the GO Zone are included in the deduction.

Federal Determinations.

This bill would reduce the period of time in which a taxpayer must report a federal change from two years to six months. When the federal government corrects or otherwise determines the amount of an estate, gift, or income that is subject to tax, the taxpayer must file a State return that reflects that change. This is so because the State estate, gift, and income taxes are, to varying degrees, based on amounts determined with respect to federal law. The Multistate Tax Commission has adopted a model uniform statute for reporting federal changes. That model uniform statute requires a taxpayer to report those changes within six months. The model statute is intended to bring uniformity to this area among the states. Currently there is a great deal of variety with some states requiring changes to be reported in as little as 90 days to as much as two years. This provision becomes effective July 1, 2006, and applies to federal determinations made on or after that date.

Filing period for nonresident aliens.

Section 6072(c) of the Code requires a nonresident alien to file an income tax return on or before the fifteenth day of the sixth month following the close of the taxable year (June 15th for taxpayer whose taxable year is the calendar year). Under current State law, nonresident alien corporate taxpayers must file a State return by the fifteenth day of the third month following the close of the taxable year (March 15th for a calendar year taxpayer) and nonresident alien individual taxpayers must file a State return by the fifteenth day of the fourth month following the close of the taxable year (April 15th for a calendar year taxpayer). Thus, under current State law a nonresident alien is required to file a State income tax return before the federal tax return is due. This provision would conform the State filing deadlines to

the federal filing deadlines for nonresident aliens and would ease compliance burdens on those taxpayers. These provisions become effective for taxable years beginning on or after January 1, 2006.

Credit for child-care and certain employment-related expenses.

Current State law allows a credit to a taxpayer who is eligible for the federal credit for child-care and employment-related expenses. The amount of the credit is based on a percentage of those expenses up to a certain amount. For the State credit, the amount of expenses that may be taken into consideration when computing the credit are capped at $2,400 when there is one qualifying individual in the household and $4,800 when there is more than one qualifying individual in the household. Until 2003, these limits were the same as those at the federal. In 2003, the federal limits increased to $3,000 and $6,000 respectively. This provision would conform the State limits to the federal limits. This provision also clarifies that the amount of expenses used in calculating the credit may not include any amount excluded from gross income. This provision becomes effective for taxable years beginning on or after January 1, 2006.

Y. Canaan Huie, staff attorney, substantially contributed to this summary.

H1892e1-SMLA

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 1892 (First Edition)

SHORT TITLE: IRC Update.

SPONSOR(S): Representatives Wainwright, Luebke, Carney, and Wilkins

FISCAL IMPACT (millions)

	Yes (x)	No ( )	No Estimate Available ( )		
	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:	(5.1)	(5.1)	(5.0)	(5.0)	(5.0)
EXPENDITURES:					
POSITIONS (cumulative):					

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

EFFECTIVE DATE: Sections 1, 2, and 10 are effective when law. Sections 3, 4, 5, and 6 become effective July 1, 2006 and apply to federal determinations made on or after that date. Sections 7, 8, and 9 are effective for taxable years beginning on or after January 1, 2006.

BILL SUMMARY: Generally North Carolina tracks federal law as it relates to income tax provisions. However, because of constitutional limitations, the General Assembly must proactively decide each year to update its reference to the Internal Revenue Code (IRC). Updating the reference date for the code allows the state to track recent changes in federal tax law. The legislation changes the reference date in North Carolina statutes from January 1, 2005 to January 1, 2006, effectively including several recent federal tax law changes.

The bill also makes several other changes to the State's tax law. First, it shortens the amount of time a taxpayer has to file an amended State return to reflect changes or corrections in their federal return. Currently taxpayers have two years after the change to file an amended return. The legislation shortens this period to six months. This provision applies to all state taxes which are based on federal returns including estate, income, and gift taxes. The legislation also conforms state nonresident alien return due dates to similar federal dates. Finally, the legislation conforms the state amounts associated with the child care credit and certain employment related expense credits to those allowed under federal law.

ASSUMPTIONS AND METHODOLOGY: The legislation makes numerous changes to the state's tax laws which have some revenue impact.

IRC Update: Section 1 of the bill updates the reference to the federal code from January 1, 2005 to January 1, 2006. This has the effect of including the changes associated with four pieces of federal legislation: the Energy Tax Incentive Act of 2005 (Energy Act), the Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005 (SAFE Act), the Katrina Emergency Tax Relief Act of 2005 (Katrina Act), and the Gulf Opportunity Zone Act of 2005 (GO Act). While these bills included a significant number of tax changes, only some flow through to the state return. The items with a likely fiscal impact are addressed below.

Energy Act: The Energy Act created a variety of incentives to purchase energy efficient vehicles, facilities, and home improvement items. Because many of these incentives are in the form of credits, they do not impact North Carolina taxable income. As such, they produce no revenue gain or loss. However, there are four items in the bill that do create a potential loss for the state.

- Alternative Fuel Vehicles: The Energy Act eliminated the existing deduction for clean-fuel vehicles and certain refueling property, and replaced it with a tax credit. Because federal tax credits do not affect North Carolina taxable income, the credit has no impact on state revenues, while eliminating the deduction would actually create a revenue gain. The Joint Committee on Taxation estimates a national loss in 2006 of $8.0 million from this change. Data from the Bureau of Economic Analysis and Economy.com suggest that North Carolina will be approximately 2.85% of US auto sales. Using this percent as a proxy for alternative fuel vehicle sales suggests a state revenue gain of $225,000 in 2006. In future years the change will be less than $100,000.
- Electric Transmission Assets: Under previous federal law, a taxpayer could recognize a qualified gain from a qualifying electric transmission transition if that transaction was completed before January 1, 2007. The Energy Act extends that date to January 1, 2008. Conforming to the Code will also extend this date to 2008. The Joint Committee on Taxation estimates a national 2006 loss of $105 million, and a 2007 loss of $237 million. However, because of the limited information available concerning the distribution of these assets and transitions, no North Carolina estimate is possible on this portion of the bill.
- Energy Efficient Commercial Buildings Property Deduction: The Act allows taxpayers to claim a deduction (as opposed to depreciation or amortization) for costs associated with energy efficient commercial building property placed into service between January 1, 2006 and January 1, 2008. The estimated state revenue change as a result of the proposal is outlined below. It assumes an average federal tax rate of 34% and uses North Carolina's portion of federal corporate tax payments as a proxy for North Carolina's portion of the loss. In addition, because this can be used by both individuals and corporations, the average loss is used as a proxy for the actual loss.

Millions

Commercial Building Property	FY 06-07	FY 07-08	FY 08-09	FY 09-10	FY 10-11
JCT Estimate of Federal change	(81,000,000)	(141,000,000)	(48,000,000)	6,000,000	5,000,000
Federal Tax Base Change (34%)	(238,235,000)	(414,706,000)	(141,176,000)	17,647,060	14,705,880
NC Portion of Federal Collections	0.53%	0.53%	0.53%	0.53%	0.53%
NC Base Change	(1,262,650)	(2,197,940)	(748,240)	93,529	77,941
Corporate Estimate	(87,120)	437	437	437	437
Individual Estimate	(104,170)	(1,098,750)	(373,900)	46,983	39,189
Average	(95,650)	(549,160)	(186,730)	23,710	19,813

- Depreciation, Amortization, and Other Changes: The federal legislation creates more favorable depreciation and amortization schedules for a number of large purchases including air pollution control facilities for coal-fired plants, certain electric power purchases. The JCT has developed a series of estimates related to these changes. However, because these investments are highly concentrated, based on the individual business decisions of a limited number of companies, and are not linked to any particular state or national ratio, no exact fiscal estimate is possible on these portions of the legislation.

SAFE Act: Although the Act makes a substantial number of changes at the federal level, the changes do not impact North Carolina taxable income. As such, there is no state impact associated with this legislation.

Katrina Act: The federal legislation defines both a "Hurricane Katrina Disaster Area" and a "core disaster area" and provides additional tax advantages for individual who live in those areas, own property in those areas, or make certain charitable contributions to relief efforts in those areas.

While many of these changes could have a revenue impact, the largest potential fiscal impact will likely come from the changes related to charitable contributions. Under federal law. the size of deduction allowed for charitable contributions is limited for certain types of taxpayers, certain types of property donated, and the type of organization receiving the donation. Generally cash contributions are deductible in the amount contributed, "capital gain property" is deductible at fair market value, other appreciated property donations are deductible at the donor's base in property, and depreciated property is deductible at fair market value. In addition, the tax value of the donation can not exceed a certain proportion of their adjusted gross income. The Katrina Act provides several exceptions to these limitations on charitable contribution deductions. The Joint Committee on Taxation estimates a 2006 cost associate with this change of $819.0 nationwide. Using North Carolina's proportion of charitable contributions at the federal level as a proxy suggests conforming on this change will result in a one time loss to the General Fund of $5.89 million. In addition, there were numerous changes related to the cost of assisting with the relief effort including a change in the standard deductible mileage rate, mileage reimbursements to volunteers, enhanced deductions for contributions of food and book inventories, and an increased personal exemption for housing victims of the hurricanes. Based on data from the Joint Committee on Taxation, North Carolina's portion of federal taxes, and the average North Carolina

tax rate, Fiscal Research estimates a 2006-07 loss associated with this change of $142,000. In 2007-08 that number drops to $53,000.

Most of the remaining changes related specifically to residents, former residents, and property owners in the Gulf Region. Clearly most of the victims of Hurricanes Katrina and Rita were relocated to areas closer to the gulf than North Carolina. However, the North Carolina Department of Public Instruction indicates that approximately 1,462 students entered the North Carolina school system as a result of the hurricanes. Thus, at least some former residents relocated to the state. To the extent they take advantage of the new special tax changes the State will see a loss. However, given the limited number of families involved, the potential loss is expected to be relatively insignificant.

GO Act: While this Act makes numerous tax law changes, most are related specifically to the Gulf area. Based on data provided by the Joint Committee on Taxation, it appears that the only change that will have a measurable fiscal impact on North Carolina is the temporary suspension of limitation on qualified corporate charitable contributions for Hurricanes Rita and Wilma relief efforts. The Joint Committee estimates that in 2006 this change will result in a $85 million loss for the federal government. Using the state's portion of Gross Domestic Product as a proxy for North Carolina's portion of the revenue loss, and adjusting for base differences, suggests a potential revenue loss for the state of $34,000. This is a one time loss, as it relates only to contributions made between August 28, 2005 and December 31, 2005. Any other revenue affects related to this legislation are expected to be negligible.

While the above outlines the IRC update conformity issues, the legislation also addresses several other tax issues.

Credit for Child Care: Under current law taxpayers can receive both a federal and state credit for work related child care expenses. For many years, the amount of expenses that could be considered when calculating the credit was the same at both the state and federal level. In 2003 the federal government increased the cap on those qualifying expenses from $2,400 to $3,000 ($4,800 to $6,000 if there is more than one qualifying individual in the household). At that time the state did not conform to this change. The legislation would bring state caps in line with the federal caps. According to the Policy Analysis and Statistics Division of the North Carolina Department of Revenue (formerly Tax Research), the annual cost of such a change is approximately $5.0 million.

Other: The legislation also addresses several other tax issues. First, the bill reduces the period of time in which a taxpayer must report a federal change from two years to six months. This change is expected to ease processing at the North Carolina Department of Revenue, but will have no revenue side implications. Second, the bill alters the tax filing date for nonresident aliens. Specifically, it conforms the State filing deadlines to the federal filing deadlines for nonresident aliens and would ease compliance for those taxpayers. No revenue impact is expected as a result of this change.

SOURCES OF DATA: Joint Committee on Taxation, Internal Revenue Service, North Carolina Department of Revenue, and the North Carolina Department of Public Instruction.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Linda Millsaps & Brenna Erford

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: May 22, 2006

Signed Copy Located in the NCGA Principal Clerk's Offices

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☐ Committee Substitute for

HB 1892 A BILL TO BE ENTITLED AN ACT TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE USED IN DEFINING AND DETERMINING CERTAIN STATE TAX PROVISIONS AND TO MAKE OTHER CHANGES TO MORE CLOSELY CONFORM TO FEDERAL TAX LAW.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 1938

Short Title:	Amend Taxation of Logging Machinery.	(Public)
Sponsors:	Representatives Wainwright, Church, McComas, Underhill (Primary Sponsors); Carney, Gibson, Hill, Luebke, Wilkins, Gillespie, Spear, and McGee.	
Referred to:	Finance.	

May 15, 2006

A BILL TO BE ENTITLED

AN ACT TO TREAT COMMERCIAL LOGGING MACHINERY THE SAME AS FARM MACHINERY UNDER THE SALES TAX.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-164.13 is amended by adding a new subdivision to read:

"...

(4f) Sales of the following to a person who is engaged in the commercial logging business:

a. Logging machinery. – Logging machinery is machinery used to harvest raw forest products for transport to first market.

b. Attachments and repair parts for logging machinery.

c. Lubricants applied to logging machinery.

d. Fuel used to operate logging machinery.

..."

SECTION 2. Article 5F of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-187.53. Commercial logging items.**

This Article does not apply to an item that is exempt from sales and use tax under G.S. 105-164.13(4f)."

SECTION 3. This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended by this act before the effective date of this act, nor does it affect the right to any refund of a tax that accrued under the amended statute before the effective date of its amendment.

SECTION 4. This act becomes effective July 1, 2006, and applies to items purchased on or after that date.

HOUSE BILL 1938:
Amend Taxation of Logging Machinery

BILL ANALYSIS

Committee:	House Finance	**Date:**	May 23, 2006
Introduced by:	Reps. Wainwright, Church, McComas, Underhill	**Summary by:**	Cindy Avrette Committee Counsel
Version:	First Edition		

SUMMARY: House Bill 1938 is a recommendation of the Revenue Laws Study Committee. It would exempt from the 1% privilege tax, with an $80 maximum tax per article, commercial logging machinery, attachments, repair parts for commercial logging machinery, lubricants applied to commercial logging machinery, and fuel to operate commercial logging machinery for use in commercial logging operations, effective for purchases made on or after July 1, 2006.

BACKGROUND & CURRENT LAW: For years, State tax law has provided that the sales and use tax rate on mill machinery is 1%, with an $80 maximum tax per article. There has never been a specific reference in the sales tax statutes to machinery used in the forestry and logging business. However, based on a long-standing interpretation by the Department of Revenue, logging firms that had contracts with wood product manufacturers to cut timber were deemed to be entitled to the 1% rate, $80 cap based on the preferential rate afforded to manufacturing industries and plants.

For several years, North Carolina has worked toward simplifying its sales and use tax statutes in an effort to conform to the Streamlined Sales and Use Tax Agreement. One of the conforming changes the State had to make was to simplify its sales tax rates. Under the Streamlined Sales and Use Tax Agreement, a state must have one rate, with no caps or thresholds, by January 2006.

Prior to January 1, 2006, North Carolina had several different rates, including this 1% rate with an $80 cap. To conform to the Streamlined Sales and Use Tax Agreement, the General Assembly changed how the State taxes items previously taxed at the 1% sales tax rate with an $80 cap:

- In 2001, at the request of North Carolina Citizens for Business and Industry, the General Assembly maintained the preferential tax rate on mill machinery by removing it from the sales tax statutes. By changing the nature of the tax from a sales tax to a privilege tax, the industry kept its preferential rate and the State conformed to the Streamlined Sales and Use Tax Agreement. The change from a sales tax to a privilege tax means that retailers are not responsible for collecting and remitting the tax. The change in the law, made in 2001, became effective January 1, 2006. Based upon the long-standing interpretation by the Department, this change encompassed machinery used in the forestry and logging business.
- In 2005, the General Assembly exempted sales to farmers of machinery, attachments and repair parts for the machinery, and lubricants applied to the machinery. It also expanded the 1% privilege tax with an $80 cap, originally enacted in 2001, to include manufacturing fuel and major recycling equipment

Thus, as of January 1, 2006, purchases of mill machinery, which includes commercial logging equipment, and mill machinery parts or accessories and manufacturing fuel, are exempt from sales and use tax, but are subject to the new privilege tax. The privilege tax is imposed on the purchaser of qualifying property, and the purchaser is liable for accruing and remitting the tax to the Department of

Revenue. Examples of qualifying commercial logging equipment include log skidders, log carts, tree shears, feller bunchers, winches, chain saws, tractors, axes, and mallets when the items are used to cut and transport timber to a wood products manufacturer.

BILL ANALYSIS: House Bill 1938 would treat commercial logging machinery and related items the same as farm machinery under the current sales tax laws. First, the bill exempts commercial logging items from the 1%/$80 maximum privilege tax, to which they are currently subject. The bill also creates a new exemption in the sales and use tax statutes for commercial logging machinery, attachments and repair parts, lubricants, and fuel used to operate commercial logging machinery. The language of the exemption tracks the current exemption for farm machinery, as enacted in S.L. 2005-276.

EFFECTIVE DATE: The exemption would become effective for qualifying purchases made on or after July 1, 2006.

Trina Griffin substantially contributed to this summary.

H1938e1-SMRB

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 1938 (First Edition)

SHORT TITLE: Amend Taxation of Logging Machinery.

SPONSOR(S): Representatives Wainwright, Church, McComas, and Underhill

FISCAL IMPACT

	Yes (x)	No ( )	No Estimate Available ( )		
	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES:	(2.87)	(2.87)	(2.87)	(2.87)	(2.87)
EXPENDITURES:					
POSITIONS (cumulative):					

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

EFFECTIVE DATE: July 1, 2006

BILL SUMMARY: Historically mill machinery, including commercial logging equipment, has been subject to state sales tax at the rate of 1.0%, with an $80 cap per item. Because such special sales tax rates do not conform to the Streamlined Sales Tax Agreement, to which North Carolina is a party, in 2001 the General Assembly chose to move this remove this special treatment from the sales tax statutes, and instead created a special privilege tax of the same amount. This change effectively exempted these purchases of mill machinery from sales tax, but made the purchaser liable for remitting a similar amount of tax under the privilege tax statutes, directly to the Department of Revenue. This change became effective January 1, 2006. The legislation exempts commercial logging equipment from this new privilege tax, treating it the same as agricultural equipment.

ASSUMPTIONS AND METHODOLOGY: No data specific to loggers or logging operations is available from the North Carolina Department of Revenue. Thus an alternative means of estimating is required.

Information from the North Carolina Division of Forestry and the North Carolina Forestry Association indicates that there are approximately 1,000 independent logging contractors in North Carolina with one or more crew members that have completed specialized continuing education for logging professionals. There are approximately 50 additional logging operations in the state that do not employ anyone who has completed these continuing education courses. Given this, the total number of logging operations estimated by the Division of Forestry is approximately 1,050.

A February 2006 issue of Texas Logger magazine suggests the following taxable operating costs for a biomass logging facility:

Operating Costs:	
Repair/Maintenance (100% of depreciation):	113, 250
Diesel Fuel (Off highway)	141,039
Large Parts (Tires, etc.)	16,200
Total	270,489

Using this number as a proxy for the operating costs associated with a North Carolina logging facility suggests that exempting these purchases from tax would result in a revenue loss of approximately $2.84 million annually ($270,489 x 1,050 loggers x 1.0% tax).

The same Texas Logger magazine article suggests that a logging operation requires approximately $755,000 in capital investment. This amount represents purchase of six (6) items: a feller buncher, grapple skidder, whole tree chipper, bulldozer and two service trucks. According to "The Used Connection" web site, the used prices for all these items exceed $8,000. As such, all six items would be taxed at the maximum amount of $80.00 per item, for a total tax on equipment of $480.00. Assuming this equipment is replaced every 15 years suggests that 70 loggers will replace their equipment each year. Thus the annual revenue loss associated with these purchases is $33,600 ($480 x 70 loggers).

The total annual loss associated with this legislation is reflected in the fiscal impact box.

SOURCES OF DATA: North Carolina Division of Forestry, North Carolina Forestry Association, Texas Logger magazine.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Linda Millsaps & Brenna Erford

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: May 22, 2006

Official
Fiscal Research Division
Publication

Signed Copy Located in the NCGA Principal Clerk's Offices

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☐ Committee Substitute for

HB 1938 A BILL TO BE ENTITLED AN ACT TO TREAT COMMERCIAL LOGGING MACHINERY THE SAME AS FARM MACHINERY UNDER THE SALES TAX.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 1962

Short Title:	Franchise Tax Loophole Closing.	(Public)
Sponsors:	Representatives Luebke; Carney, Church, Hill, Wilkins, Wainwright, Harrison, B. Allen, Insko, and Weiss.	
Referred to:	Finance.	

May 15, 2006

A BILL TO BE ENTITLED

AN ACT TO APPLY THE FRANCHISE TAX TO CERTAIN LIMITED LIABILITY COMPANIES AND TO PROVIDE A CREDIT FOR ADDITIONAL ANNUAL REPORT FEES PAID BY LIMITED LIABILITY COMPANIES SUBJECT TO FRANCHISE TAX.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-114(b) reads as rewritten:

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

(1) City. – Defined in G.S. 105-228.90.

(1a) Code. – Defined in G.S. 105-228.90.

(2) Corporation. – A domestic corporation, a foreign corporation, an electric membership corporation organized under Chapter 117 of the General Statutes or doing business in this State, or an association that is organized for pecuniary gain, has capital stock represented by shares, whether with or without par value, and has privileges not possessed by individuals or partnerships. The term includes a mutual or capital stock savings and loan association or building and loan association chartered under the laws of any state or of the United States. The term includes a limited liability company that elects to be taxed as a C Corporation under the Code, but does not otherwise include a limited liability company.

(3) Doing business. – Each and every act, power, or privilege exercised or enjoyed in this State, as an incident to, or by virtue of the powers and privileges granted by the laws of this State.

(4) Income year. – Defined in G.S. 105-130.2(5)."

SECTION 2. G.S. 105-114.1 reads as rewritten:

"**§ 105-114.1. Limited liability companies.**

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

(1) Affiliated group. – Defined in section 1504 of the Code.
(2) Capital interest. – The right under a limited liability company's governing law to receive a percentage of the company's assets upon dissolution after payments to creditors.
(3) Entity. – A person that is not a human being.
(4) Governing law. – A limited liability company's governing law is determined under G.S. 57C-6-05 or G.S. 57C-7-01, as applicable.
(5) Noncorporate limited liability company. – A limited liability company that does not elect to be taxed as a C Corporation under the Code.

(b) Controlled Companies. – If a corporation or an affiliated group of corporations owns more than fifty percent (50%) of the capital interests in a noncorporate limited liability company, the corporation or group of corporations must include in its three tax bases pursuant to G.S. 105-122 the same percentage of (i) the noncorporate limited liability company's capital stock, surplus, and undivided profits; (ii) fifty-five percent (55%) of the noncorporate limited liability company's appraised ad valorem tax value of property; and (iii) the noncorporate limited liability company's actual investment in tangible property in this State, as appropriate.

(c) Constructive Ownership. – Ownership of the capital interests in a noncorporate limited liability company is determined by reference to the constructive ownership rules for partnerships, estates, and trusts in section 318(a)(2)(A) and (B) of the Code with the following modifications:
(1) The term "capital interest" is substituted for "stock" each place it appears.
(2) A noncorporate limited liability company and any noncorporate entity other than a partnership, estate, or trust is treated as a partnership.
(3) The operating rule of section 318(a)(5) of the Code applies without regard to section 318(a)(5)(C).

(d) No Double Inclusion. – If a corporation is required to include a percentage of a noncorporate limited liability company's assets in its tax bases under this Article pursuant to subsection (b) of this section, its investment in the noncorporate limited liability company is not included in its computation of capital stock base under G.S. 105-122(b).

(e) Affiliated Group. – If the owner of the capital interests in a noncorporate limited liability company is an affiliated group of corporations, the percentage to be included pursuant to subsection (b) of this section by each group member that is doing business in this State is determined by multiplying the capital interests in the noncorporate limited liability company owned by the affiliated group by a fraction. The numerator of the fraction is the capital interests in the noncorporate limited liability company owned by the group member, and the denominator of the fraction is the capital interests in the noncorporate limited liability company owned by all group members that are doing business in this State.

(f) Exemption. – This section does not apply to assets owned by a noncorporate limited liability company if the total book value of the noncorporate limited liability

company's assets never exceeded one hundred fifty thousand dollars ($150,000) during its taxable year.

(g) Timing. – Ownership of the capital interests in a noncorporate limited liability company is determined as of the last day of its taxable year. The adjustments pursuant to subsections (b) and (d) of this section must be made to the owner's next following return filed under this Article. If a noncorporate limited liability company and a corporation or an affiliated group of corporations have engaged in a pattern of transferring assets between them with the result that each did not own the capital interests on the last day of its taxable year, the ownership of the capital interests in the noncorporate limited liability company must be determined as of the last day of the corporation or group of corporations' taxable year.

(h) Penalty. – A taxpayer who, because of fraud with intent to evade tax, underpays the tax under this Article on assets attributable to it under this section is guilty of a Class H felony in accordance with G.S. 105-236(7)."

SECTION 3. Article 3 of Chapter 105 is amended by adding a new section to read:

"**§ 105-122.1. Credit for additional annual report fees paid by limited liability companies subject to franchise tax.**

A limited liability company subject to tax under this Article is allowed a credit against the tax imposed by this Article equal to the difference between the annual report fee for corporations under G.S. 55-1-22 and the annual report fee for limited liability companies under G.S. 57C-1-22(a). The credit allowed by this section may not exceed the amount of tax imposed by this Article for the taxable year reduced by the sum of all credits allowed, except payments of tax made by or on behalf of the taxpayer."

SECTION 4. This act is effective for taxable years beginning on or after January 1, 2007.

HOUSE BILL 1962:
Franchise Tax Loophole Closing

BILL ANALYSIS

Committee:	House Finance	**Date:**	May 23, 2006
Introduced by:	Rep. Luebke	**Summary by:**	Trina Griffin
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 1962 would apply the corporate franchise tax to limited liability companies that elect to be taxed as a C Corporation for federal income tax purposes. The bill would also provide LLCs that elect to be taxed as a C Corporation a credit for the difference between annual report fees for corporations and LLCs such that those LLCs are paying the lower corporation annual report fee rate. This bill is a recommendation of the Revenue Laws Study Committee.

CURRENT LAW: Under North Carolina law, limited liability companies[1] (LLCs) are not subject to the franchise tax. In 1997, the North Carolina law regarding LLCs was changed to allow for a single-member LLC. This change had the unintended consequence of allowing a corporation subject to North Carolina franchise tax to set up an LLC and transfer assets to the LLC in a tax-free transfer. The assets then held by the LLC would not be subject to the franchise tax. Thus, the corporation could avoid a significant portion of its franchise tax liability by transferring assets into a wholly owned LLC without affecting its income tax liability. This loophole was the first of a number of loopholes that gave rise to a series of legislative changes enacted over the last five years attempting to close those loopholes.[2]

Under current law, the franchise tax now extends to all LLC assets that a corporation controls through trusts and other entities, with some limitation. Specifically, a corporation (or an affiliated group of corporations) must own more than 50% of the capital interests in a limited liability company for the attribution rules to apply, and LLCs whose assets do not exceed $150,000 are exempt.

The concept of control is determined by tracing ownership of the capital interests in the LLC's assets. A capital interest is the right to receive some or all of the assets under the LLC's governing law if the LLC was dissolved. Ownership of the capital interests in an LLC is traced, using the principles of constructive ownership, through any noncorporate entities. The chain of constructive ownership can run through layers of noncorporate entities but not through individuals. The franchise tax is payable by the corporation or affiliated group of corporations to which ownership of the capital interests is traced. Ownership of capital interests in an LLC is determined as of the last day of the LLC's tax year. If an LLC and a corporation engage in a pattern of trading assets back and forth so that neither owns them on its respective trigger date, the Secretary may require the determination to be made as of the last day of the corporation's tax year. If the capital interests in an LLC are owned by an affiliated group of corporations, the value of the assets is allocated among the members of the group for franchise tax purposes so that there will not be double taxation of any assets. The allocation is in proportion to each affiliate's ownership interest.

[1] A limited liability company is a business entity that is essentially a hybrid of a partnership and a corporation. Like a corporation, an LLC limits the liability of its owners. Like a partnership, an LLC is usually not subject to entity-level taxation.

[2] See the BACKGROUND section of this summary for a detailed description of recent legislative changes regarding the franchise tax loophole.

BILL ANALYSIS: House Bill 1962 does the following:

- It applies the corporate franchise tax to limited liability companies that elect to be taxed as a C Corporation. It also makes conforming changes to G.S. 105-114.1 regarding the attribution of certain LLC assets to controlling corporations for franchise tax purposes.
- It provides LLCs that elect to be taxed as a C Corporation a nonrefundable credit for the difference between the annual report fee for corporations, which is $20.00, and the annual report fee for limited liability companies, which is $200.

This bill originated as the result of at least one request for a private letter ruling from a major accounting firm. Based on this request, the Department of Revenue identified another scenario that could result in a corporation's avoidance of paying franchise tax. This scenario would involve a corporation headquartered in North Carolina, but whose parent company is domiciled outside North Carolina. In addition, the parent's only contact with North Carolina is its ownership of the corporation. This corporation, which already files as a C Corporation for federal tax purposes, could convert to an LLC but make an election to continue being taxed as a C Corporation and avoid franchise tax because the parent has no nexus with this State and thus the "constructive ownership" attribution rules do not apply.

Current law provides that an LLC may be disregarded and treated as a division of its parent. The parent company is then considered to own property in this State and therefore has nexus, making it subject to income and franchise tax, and the constructive ownership rules apply for attributing the LLC's assets to the parent's franchise tax calculation. However, when an LLC elects to be taxed as a C Corporation, nexus is not conferred on the parent and the attributes of the LLC do not flow to the parent. Therefore, companies currently operating in this State as C Corporations could convert to an LLC, make an election to file as a C Corporation, as they always have, and eliminate their North Carolina franchise tax obligations.

Under this bill, LLCs that elect to be taxed as a C Corporation would be subject to franchise tax. LLCs that do not elect to be taxed as a C Corporation would be considered "noncorporate LLCs" and would be subject to the attribution rules in G.S. 105-114.1 for franchise tax purposes.

EFFECTIVE DATE: This bill would become effective for taxable years beginning on or after January 1, 2007.

BACKGROUND:

Franchise Tax Generally – The State franchise tax is among the oldest taxes in North Carolina. It is a tax on S Corporations and C Corporations for the privilege of doing business in the State. The tax rate is $1.50 per $1,000 of value of the greatest of (1) apportioned net book value of the corporation; (2) 55% of appraised value of real and tangible personal property in NC; or (3) total actual investment in tangible property in NC.

The Department of Revenue, in its 2003 reports to the Revenue Laws Study Committee, noted that there exists a general franchise tax inequity because the imposition of the tax depends on the type of entity. The Governor's Commission to Modernize State Finances recommended that the State impose the franchise tax on all types of business entities, not just on traditional corporations. The Commission recommended that the revenues generated from this base broadening could be used to establish a minimum net worth threshold for payment of the tax.

Franchise Tax Loophole History – In 2001, the General Assembly enacted S.L. 2001-327 to close a loophole whereby a corporation, subject to North Carolina franchise tax, could set up a single-member LLC, transfer assets to the LLC in a tax-free transfer, and avoid paying taxes on the transferred assets

since LLCs are not subject to the franchise tax. The 2001 legislation tried to address the problem by requiring a corporation to pay tax on assets owned by the LLC if the corporation, including its affiliated corporations, indirectly owned[3] at least 70% of the LLC's assets. Unfortunately, tax planners found that the tax could still be avoided by using an additional paper transaction. If the corporation interposed a partnership between itself and the LLC holding its assets, then technically the 2001 legislation would not apply and the assets would continue to escape franchise tax.

In 2002, the General Assembly enacted S.L. 2002-126 to tighten the 2001 law. The 2002 legislation required attribution through "related members" (other entities and individuals) who may partner with one or more corporate entities to own the LLC that will hold the corporate assets. "Related members" is a defined term and includes shareholders, partnerships, etc. If a corporation and its related members together indirectly own at least 70% of an LLC's assets, the 2002 legislation provides that each corporation pays franchise tax on its relative share of the LLC's assets. The relative share is calculated after excluding those related members that are not corporations. Thus, the entire assets are subject to franchise tax, with the tax burden shared proportionally by the corporations that are involved in the ownership scheme.

After the 2002 legislation was enacted, it became apparent that it not only failed to close the loophole but also extended the franchise tax to situations that did not involve corporate control of LLC assets. The loophole remained open because there are additional paper transactions that can be interposed between the corporation and the LLC in order to circumvent the attribution of the LLC's assets to the corporation. For example, control may be passed through a business trust.[4]

In 2004, the General Assembly enacted S.L. 2004-74 to address these issues by providing that for purposes of determining ownership of an LLC's assets, any membership interest of a business trust would be attributed to the owners of the beneficial interest in the business trust, according to their interests in the trust, and the trust itself would be disregarded as a separate entity. In addition, the legislation limited the tax to only those assets that a corporation controls, it reduced the minimum threshold of LLC asset ownership from 70% or more to more than 50%, and it exempted small LLCs.

H1962e1-SMSV

[3] Indirect ownership of an LLC's assets is determined based on who is entitled to receive those assets upon dissolution of the LLC.

[4] A business trust is not considered a related member, as that term is defined in G.S. 105-130.7A, because it would be the corporation, not the shareholders, that would form the trust.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

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

DATE: May 22, 2006

TO: House Finance Committee

FROM: David Crotts
Fiscal Research Division

RE: House Bill 1962 (First Edition)
Franchise Tax Loophole Closing

FISCAL IMPACT

Yes (x)	No ( )	No Estimate Available (x)		
FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:				
EXPENDITURES:				
POSITIONS (cumulative):				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: The franchise tax is administered by the Department of Revenue. The enactment of the bill is not expected to affect the Department's budget requirements.

EFFECTIVE DATE: Tax years beginning on or after January 1, 2007.

ISSUE BACKGROUND: Under North Carolina law, limited liability companies (LLCs) are not subject to the franchise tax. In 1997 single-member LLCs were authorized in North Carolina. This allowed a corporation the opportunity to set up an LLC and transfer assets to the LLC in a tax-free transfer. The assets then held by the LLC would not be subject to the franchise tax.

The 2001 General Assembly attempted to correct this situation by requiring a corporation to pay tax on assets owned by the LLC if the corporation, including its affiliated corporations, indirectly owned at least 70% of the LLC's assets. However, tax planners found that the tax could still be avoided by using an additional paper transaction. For example, if the corporation interposed a partnership between itself and the LLC holding its assets, the assets would continue to escape the franchise tax.

In 2002, the General Assembly addressed this issue by including "related members" (other entities and individuals) who may partner with one or more corporate entities to own the LLC to which the corporate assets are transferred. If a corporation and its related members together indirectly own at least 70% of an LLC's assets, each corporation would pay the franchise tax on its relative share of the LLC's assets.

After the enactment of the 2002 session change, it was discovered that there are other paper transactions that can be interposed between the corporation and the LLC to avoid the franchise tax. One example is a business trust. The tax does not apply in this situation because the trust is not considered a "related member". In addition, the 2002 legislation also had the effect of extending the tax to situations that did not involve corporate control of LLC assets.

The 2004 General Assembly attempted to address these issues by providing that for purposes of determining the ownership of an LLC's assets, any membership interest of a business trust would be attributed to the owners of the beneficial interest in the business trust, according to their interests in the trust, and the trust itself would be disregarded as a separate entity. In addition, the 2002 bill limits the tax to only those assets that a corporation controls and exempts small LLC's.

BILL SUMMARY: (1) Applies the corporate franchise tax to limited liability companies (LLCs) that elect to be taxed as a C corporation for federal income tax purposes; (2) provides these corporations are eligible for a nonrefundable credit equal to the difference between the annual report fee for corporations ($20) and the same fee for LLC's ($200); (3) makes conforming changes regarding attribution of certain LLC assets to controlling corporations for franchise tax purposes.

ASSUMPTIONS AND METHODOLOGY: Discussions with the Department of Revenue indicate that the practical effect of the legislation is to address another potential method of avoiding franchise tax liability by corporate structuring arrangements. The concern arose as a result of a request from a major accounting firm for a private letter ruling. The tax planning scenario would involve a corporation headquartered in North Carolina, but whose parent company is domiciled outside the State. In addition, the parent's only contact with North Carolina is its ownership of the corporation. This corporation, which already files as a C-corporation for federal tax purposes, could convert to an LLC but make an election to continue being taxed as a C-corporation and avoid franchise tax because the parent has no nexus (tax situs) with this State. Thus, the "constructive ownership" attribution rules do not apply.

The Department has no data on whether any companies have already established such arrangements. An attempt by the Department to quantify the number of 2003 taxpayers who might be affected by the proposal was not conclusion because many tax planning changes will have

occurred more recently and the fact that many 2003 taxpayers have since become part of other corporate entities.

The request for a private letter ruling suggests that one or more accounting firms were contemplating the use of such a tax sheltering vehicle. With the passage of time since the legislation was originally proposed, it is possible that the activity level of this tax planning tool has accelerated.

SOURCES OF DATA: Discussions with Department of Revenue

TECHNICAL CONSIDERATIONS: None

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☐ Committee Substitute for

HB 1962 A BILL TO BE ENTITLED AN ACT TO APPLY THE FRANCHISE TAX TO CERTAIN LIMITED LIABILITY COMPANIES AND TO PROVIDE A CREDIT FOR ADDITIONAL ANNUAL REPORT FEES PAID BY LIMITED LIABILITY COMPANIES SUBJECT TO FRANCHISE TAX.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 2048*

Short Title:	Expansion of Royalty Reporting Option.	(Public)
Sponsors:	Representatives Luebke; Carney, Church, Hill, Wainwright, and Wilkins.	
Referred to:	Finance.	

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE ROYALTY INCOME REPORTING OPTION TO INCLUDE ADDITIONAL TYPES OF INTANGIBLE PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-130.7A reads as rewritten:

"**§ 105-130.7A. Royalty income reporting option.**

(a) Purpose. – Royalty payments received for the use of ~~trademarks~~ intangible property in this State are income derived from doing business in this State. This section provides taxpayers with an option concerning the method by which these royalties can be reported for taxation when the recipient and the payer are related members. As provided in this section, these royalty payments can be either (i) deducted by the payer and included in the income of the recipient, or (ii) added back to the income of the payer and excluded from the income of the recipient.

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

(1) Component member. – Defined in section 1563(b) of the Code.

(1a) Intangible property. – Copyrights, patents, and trademarks.

(2) North Carolina royalty. – An amount charged that is for, related to, or in connection with the use in this State of ~~a trademark.~~ intangible property. The term includes royalty and technical fees, licensing fees, and other similar charges.

(3) Own. – To own directly, indirectly, beneficially, or constructively. The attribution rules of section 318 of the Code apply in determining ownership under this section.

(4) Related entity. – Any of the following:

a. A stockholder who is an individual, or a member of the stockholder's family enumerated in section 318 of the Code, if the stockholder and the members of the stockholder's family own in the aggregate at least eighty percent (80%) of the value of the taxpayer's outstanding stock.

b. A stockholder, or a stockholder's partnership, limited liability company, estate, trust, or corporation, if the stockholder and the stockholder's partnerships, limited liability companies, estates, trusts, and corporations own in the aggregate at least fifty percent (50%) of the value of the taxpayer's outstanding stock.

c. A corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of section 318 of the Code, if the taxpayer owns at least eighty percent (80%) of the value of the corporation's outstanding stock.

(5) Related member. – A person that, with respect to the taxpayer during any part of the taxable year, is one or more of the following:

a. A related entity.

b. A component member.

c. A person to or from whom there would be attribution of stock ownership in accordance with section 1563(e) of the Code if the phrase "5 percent or more" were replaced by "twenty percent (20%) or more" each place it appears in that section.

(6) Royalty payment. – Either of the following:

a. Expenses, losses, and costs paid, accrued, or incurred for North Carolina royalties, to the extent the amounts are allowed as deductions or costs in determining taxable income before operating loss deduction and special deductions for the taxable year under the Code.

b. Amounts directly or indirectly allowed as deductions under section 163 of the Code, to the extent the amounts are paid, accrued, or incurred for a time price differential charged for the late payment of any expenses, losses, or costs described in this subdivision.

(7) Trademark. – A trademark, trade name, service mark, or other similar type of intangible asset.

(8) Use. – Use of ~~a trademark~~ intangible property includes direct or indirect maintenance, management, ownership, sale, exchange, or disposition of the ~~trademark.~~ intangible property.

(c) Election. – For the purpose of computing its State net income, a taxpayer must add royalty payments made to, or in connection with transactions with, a related member during the taxable year. This addition is not required for an amount of royalty payments that meets either of the following conditions:

(1) The related member includes the amount as income on a return filed under this Part for the same taxable year that the amount is deducted by the taxpayer, and the related member does not elect to deduct the amount pursuant to G.S. 105-130.5(b)(20).

(2) The taxpayer can establish that the related member during the same taxable year directly or indirectly paid, accrued, or incurred the amount to a person who is not a related member.

(d) Indirect Transactions. – For the purpose of this section, an indirect transaction or relationship has the same effect as if it were direct."

SECTION 2. This act is effective for taxable years beginning on or after January 1, 2006.

HOUSE BILL 2048:
Expansion of Royalty Reporting Option

BILL ANALYSIS

Committee:	House Finance	**Date:**	May 23, 2006
Introduced by:	Rep. Luebke	**Summary by:**	Cindy Avrette
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 2048 is a recommendation of the Revenue Laws Study Committee.[1] It would expand the reporting option available to corporations and their related members with regard to reporting the receipt of royalty payments by including payments for patents and copyrights. The bill would become effective for taxable years beginning on or after January 1, 2006.

BACKGROUND[2] & CURRENT LAW: In recent years, intellectual property has become an enormously valuable intangible corporate asset due to the rapid change in science and technology coupled with expanding legal protections and increasing commercial success based on innovation. As intellectual property becomes a more important corporate asset, many companies with large intellectual property portfolios search for ways to maximize revenues, such as licensing those assets. Income derived from licensing intellectual property is subject to federal and state taxation as ordinary income. Given this, many companies have also developed tax strategies to minimize state taxation of royalty income.

Under one such strategy, a company with a large intellectual property portfolio forms a wholly-owned subsidiary to hold its intellectual property assets in a state that does not tax royalty income received from licensing intellectual property assets. The parent company transfers all of its intellectual property assets to the subsidiary in exchange for ownership of stock in the subsidiary. The subsidiary then licenses the intellectual property assets back to the parent company in exchange for royalties. If the parent corporation is late paying these royalties, it also owes the subsidiary late fees. The parent corporation deducts against its state income tax the royalties and late fees it owes the subsidiary. The subsidiary likely pays little or no tax on these receipts to the state in which it was formed because the receipts are either exempt or apportioned away from that state. Moreover, the subsidiary's receipts are paid back to the parent corporation in the form of deductible dividends. As a result of this arrangement, the parent corporation ends up paying little or no state tax on these profits even though it may generate substantial profits from its retail or manufacturing activities in a state. Recognizing this transfer and license-back arrangement as a tax avoidance strategy, many states have enacted laws attempting to reach this income for taxation.

In North Carolina, every C Corporation "doing business" in this State is subject to corporate income and franchise taxes.[3] Some corporations have argued that an out-of-state investment company's receipt of royalty income from the use of trademarks in this State does not constitute "doing business" in North Carolina and, therefore, the investment company is not subject to North Carolina income or franchise tax on the royalties.

However, in *A&F Trademark, Inc. v. Tolson* the North Carolina Court of Appeals upheld the State's position on the taxation of royalty income received by an out-of-state investment company for the use of

---

[1] Sen. Hoyle introduced a companion bill, Senate Bill 1458. It is in the Senate Finance Committee.

[2] Much of this information is drawn from Xuan-Thao N. Nguyen, "Holding Intellectual Property," 38 State Tax Notes 699 (November 21, 2005).

[3] See G.S. 105-130.3 and G.S. 105-122.

trademarks in this State. The Court ruled that the out-of-state taxpayers who hold trademarks used in North Carolina were doing business in North Carolina. Therefore, under current law, an out-of-state holding company receiving royalty payments for the use of trademarks, patents, or copyrights in North Carolina is subject to both North Carolina income and franchise taxes.

In 2001, the General Assembly enacted G.S. 105-130.7A to enhance corporate compliance with taxes on trademark income. This statute did not change what was already considered taxable but merely enhanced compliance with the State tax on income generated from using trademarks and added a reporting option to the income tax statute.

Specifically, G.S. 105-130.7A restates that a company's receipts from royalty payments for the use of trademarks in North Carolina are income from doing business in North Carolina. Then it provides adjustments to assure full and fair accountability of this income in relationship to where it is actually earned. In cases where the recipient of the North Carolina royalty income is unrelated to the payer, the recipient is required to pay tax on the income to North Carolina. In cases where the recipient and the payer are related, they have an option on how the income is reported to North Carolina. Either the payer can deduct the North Carolina royalty payments on its North Carolina return and the recipient can include them on its North Carolina return, or the payer can add them to its North Carolina income and the recipient can deduct them on its North Carolina return.[4]

This provision solves the problem as it relates to trademarks and trade names, but does not address other types of intellectual property, such as patents[5] and copyrights.[6]

BILL ANALYSIS: House Bill 2048 would expand the royalty payment reporting option for corporations and their related members to include payments received for use of patents and copyrights.

The bill does not change or expand what is already taxable in North Carolina. Royalty income received for the use of trademarks, patents, and copyrights in North Carolina *is* taxable and must be reported to North Carolina by an out-of-state corporation receiving this income. However, there is a reporting option currently available to corporations and their related members for royalty payments received for trademark usage that is not available when those payments are for patent or copyright usage.

House Bill 2048 would give corporations and their related members that receive royalty payments derived from patent or copyright usage the ability to select which entity, the parent or the holding company, reports the income, just as that option is currently available to those corporations with regard to trademark royalties. That is, the payer has the option of deducting the payments on its North Carolina return and the recipient can include them on its North Carolina return, or the payer can add them to its North Carolina return and the recipient can deduct them on its North Carolina return.

EFFECTIVE DATE: This act would become effective for taxable years beginning on or after January 1, 2006.

Trina Griffin substantially contributed to this summary.

H2048e1-SMRB

---

[4] See *Geoffrey, Inc. v. South Carolina Tax Com'n*, 437 S.E.2d 13 SC, 1993, cert. denied by U.S. Supreme Court, 114 S.Ct. 50 (1993). The South Carolina Supreme Court held that (1) royalty income of a foreign corporation, obtained from trademark licenses issued to an affiliate, could be taxed without violating due process clause and (2) tax could be imposed without violating interstate commerce clause.

[5] A patent for an invention is the grant of a property right to the inventor that gives the inventor the right to exclude others from making, using, offering for sale, selling or importing the invention for a specified period of time.

[6] Copyright is a form of protection provided under federal law to the authors of original works of authorship, including literary, dramatic, musical, artistic, and certain other intellectual works, both published and unpublished.

GENERAL ASSEMBLY OF NORTH CAROLINA
Session 2005

FISCAL ANALYSIS MEMORANDUM

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

DATE: May 22, 2006

TO: House Finance Committee

FROM: Dave Crotts
Fiscal Research Division

RE: House Bill 2048 (First Edition)
Expansion of Royalty Reporting Option

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:			See "Assumptions and Methodology"		
EXPENDITURES:					

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

EFFECTIVE DATE: Tax years beginning on or after January 1, 2006.

BILL SUMMARY .The 2001 General Assembly enacted legislation that eliminated the tax planning strategy of shifting trademark royalty income to another state in order to avoid the North Carolina income tax. The proposal would extend the 2001 treatment to royalty income patents and copyrights.

ASSUMPTIONS AND METHODOLOGY: A discussion with the Department of Revenue indicates that the enactment of the bill could have a positive impact on General Fund tax revenue

but the magnitude of this amount is not known. One factor limiting the impact of the proposal is that fact that in the wake of the **A & F Trademark** case, some affected taxpayers may be in compliance. Another issue is the fact that the proposal applies to patent and copyright royalty income only. In general, any revenue gain would be smaller than the receipts from the 2001 act affecting trademark income. During the 2001 discussion the estimated fiscal impact from the trademark provision was $20 million per year.

SOURCES OF DATA: North Carolina Department of Revenue.

TECHNICAL CONSIDERATIONS:

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☐ Committee Substitute for

HB 2048 A BILL TO BE ENTITLED AN ACT TO EXPAND THE ROYALTY INCOME REPORTING OPTION TO INCLUDE ADDITIONAL TYPES OF INTANGIBLE PROPERTY.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 1915*

Short Title:	SSTA Sales Tax Defn/Sales Tax Payments.	(Public)
Sponsors:	Representatives Hill; Carney, Church, Luebke, Wainwright, Wilkins, and Insko.	
Referred to:	Finance.	

May 15, 2006

A BILL TO BE ENTITLED

AN ACT TO INCORPORATE THE STREAMLINED SALES TAX DEFINITIONS CONCERNING TELECOMMUNICATIONS AND TO SIMPLIFY THE TAX PAYMENT REQUIREMENTS FOR SEMIMONTHLY TAXPAYERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-164.3 is amended by amending or adding the following definitions to read:

"**§ 105-164.3. Definitions.**

The following definitions apply in this Article:

(01) Ancillary service. – A service associated with or incidental to the provision of a telecommunications service. The term includes detailed communications billing, directory assistance, vertical service, and voice mail service. A vertical service is a service, such as call forwarding, caller ID, three-way calling, and conference bridging, that allows a customer to identify a caller or manage multiple calls and call connections.

...

(27) Prepaid telephone calling service. – Prepaid wireline calling service or prepaid wireless calling service.

(27a) Prepaid wireline calling service. – A right that meets all of the following requirements:

a. Authorizes the exclusive purchase of wireline telecommunications service.

b. Must be paid for in advance.

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

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

(27b) Prepaid wireless calling service. – A right that meets all of the following requirements:

a. Authorizes the purchase of mobile telecommunications service, either exclusively or in conjunction with other services.

b. Must be paid for in advance.

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

...

(45a) Streamlined Agreement. – The Streamlined Sales and Use Tax Agreement ~~adopted November 12, 2002,~~ as amended ~~on November 19, 2003, November 16, 2004, and April 16, 2005.~~ in November 2005.

...

(48) Telecommunications service. – The electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among ~~points, by or through any electronic, radio, satellite, optical, microwave, or other medium, regardless of the protocol used for the transmission, conveyance, or routing. The term includes mobile telecommunications service and vertical services. Vertical services are switch-based services offered in connection with a telecommunications service, such as call forwarding services, caller ID services, and three-way calling services.~~ points. The term includes any transmission, conveyance, or routing in which a computer processing application is used to act on the form, code, or protocol of the content for purposes of the transmission, conveyance, or routing, regardless of whether it is referred to as voice-over Internet protocol or the Federal Communications Commission classifies it as enhanced or value added. The term does not include the following:

a. Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a customer whose primary purpose for using the service is to obtain the processed data or information.

b. The sale, installation, maintenance, or repair of tangible personal property.

c. Directory advertising and other advertising.

d. Billing and collection services provided to a third party.

e. Internet access service.

f. Radio and television audio and video programming service, regardless of the medium of delivery, and the transmission, conveyance, or routing of the service by the programming service provider. The term includes cable service and audio and

video programming service provided by a mobile telecommunications service provider.

g. Ancillary service.

h. A digital product delivered electronically, including software, music, a ring tone, video, and reading material."

SECTION 2. G.S. 105-164.4(a)(4c) and (4d) read as rewritten:

"**§ 105-164.4. Tax imposed on retailers.**

(a) **(Effective for sales made before July 1, 2007)** A privilege tax is imposed on a retailer at the following percentage rates of the retailer's net taxable sales or gross receipts, as appropriate. The general rate of tax is four and one-half percent (4 1/2%).

(4c) The combined general rate applies to the gross receipts derived from providing telecommunications service and ancillary service. A person who provides telecommunications service or ancillary service is considered a retailer under this Article. ~~Telecommunications service is~~ These services are taxed in accordance with G.S. 105-164.4C.

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

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

"**§ 105-164.4B. Sourcing principles.**

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

(1) Over-the-counter. – When a purchaser receives a product at a business location of the seller, the sale is sourced to that business location.

(2) Delivery to specified address. – When a purchaser receives a product at a location specified by the purchaser and the location is not a business location of the seller, the sale is sourced to the location where the purchaser receives the product.

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

a. The business or home address of the purchaser.

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

c. The address from which tangible personal property was shipped or from which a service was provided."

SECTION 4. G.S. 105-164.4C reads as rewritten:

"**§ 105-164.4C. ~~Tax on telecommunications.~~Telecommunications service and ancillary service.**

(a) General. – The gross receipts derived from providing telecommunications service or ancillary service in this State are taxed at the rate set in G.S. 105-164.4(a)(4c). Telecommunications service is provided in this State if the service is sourced to this State under the sourcing principles set out in subsections (a1) and (a2) of this section. Ancillary service is provided in this State if the telecommunications service to which it is ancillary is provided in this State. The definitions and provisions of the federal Mobile Telecommunications Sourcing Act apply to the sourcing and taxation of mobile telecommunications services.

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

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

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

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

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

(3) Postpaid. – A postpaid calling service is sourced to the origination point of the telecommunications signal as first identified by either the seller's telecommunications system or, if the system used to transport the signal is not the seller's system, by information the seller receives from its service provider.

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

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

included within the term "charges for mobile telecommunications services" under the federal Mobile Telecommunications Sourcing Act.

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

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

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

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

~~(2) Charges for directory assistance, directory listing that is not yellow page classified listing, call forwarding, call waiting, three-way calling, caller ID, voice mail, and other similar services.~~

~~(3) Customer access line charges billed to subscribers for access to the intrastate or interstate interexchange network.~~

~~(4) Charges billed to a pay telephone provider who uses the telecommunications service to provide pay telephone service.~~

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

~~(1) Charges for telecommunications services that are a component part of or are integrated into a telecommunications service that is resold. Examples of services that are resold include carrier charges for access to an intrastate or interstate interexchange network, interconnection charges paid by a provider of mobile telecommunications service, and charges for the sale of unbundled network elements. An unbundled network element is a network element, as defined in 47 U.S.C. § 153(29), to which access is provided on an unbundled basis pursuant to 47 U.S.C. § 251(c)(3).~~

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

~~(3) 911 charges imposed under G.S. 62A-4 or G.S. 62A-23 and remitted to the Emergency Telephone System Fund under G.S. 62A-7 or the Wireless Fund under G.S. 62A-24.~~

~~(4) Allowable surcharges imposed to recoup assessments for the Universal Service Fund.~~

~~(5) Receipts of a pay telephone provider from the sale of pay telephone service.~~

~~(6) Charges for commercial, cable, mobile, broadcast, or satellite video or audio service unless the service provides two-way communication, other than the customer's interactive communication in connection with the customer's selection or use of the video or audio service.~~

~~(7) Paging service, unless the service provides two-way communication.~~

~~(8) Charges for telephone service made by a hotel, motel, or another entity whose gross receipts are taxable under G.S. 105-164.4(a)(3) when the charges are incidental to the occupancy of the entity's accommodations.~~

~~(9) Receipts from the sale, installation, maintenance, or repair of tangible personal property.~~

~~(10) Directory advertising and yellow-page classified listings.~~

(11) Repealed by Session Laws 2005-276, s. 33.7, effective October 1, 2005.

~~(12) Information services. An information service is a service that can generate, acquire, store, transform, process, retrieve, use, or make available information through a communications service. Examples of an information service include an electronic publishing service and a web hosting service.~~

~~(13) Internet access service, electronic mail service, electronic bulletin board service, or similar on-line services.~~

~~(14) Billing and collection services.~~

~~(15) Charges for bad checks or late payments.~~

~~(16) Charges to a State agency or to a local unit of government for the North Carolina Information Highway and other data networks owned or leased by the State or unit of local government.~~

(d) Bundled Services. – When a taxable telecommunications service is bundled with a service that is not taxable, the tax applies to the gross receipts from the taxable service in the bundle as follows:

(1) If the service provider offers all the services in the bundle on an unbundled basis, tax is due on the unbundled price of the taxable service, less the discount resulting from the bundling. The discount for a service as the result of bundling is the proportionate price decrease of the service, determined on the basis of the total unbundled price of all the services in the bundle compared to the bundled price of the services.

(2) If the service provider does not offer one or more of the services in the bundle on an unbundled basis, tax is due on the taxable service based on a reasonable allocation of revenue to that service. If the service provider maintains an account for revenue from a taxable service, the service provider's allocation of revenue to that service for the purpose of determining the tax due on the service must reflect its accounting allocation of revenue to that service.

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

(1) If all the customer's channel termination points are located in this State, the service is sourced to this State.

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

points, the charge for each channel termination point located in this State is sourced to this State.

(3) If all the customer's channel termination points are not located in this State and the service is billed on the basis of channel mileage, the following applies:

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

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

(4) If all the customer's channel termination points are not located in this State and the service is not billed on the basis of channel termination points or channel mileage, a percentage of the charge for the service is sourced to this State. The percentage is determined by dividing the number of channel termination points in this State by the total number of channel termination points.

(f) Call Center Cap. The gross receipts tax on telecommunications service that originates outside this State, terminates in this State, and is provided to a call center that has a direct pay permit issued by the Department under G.S. 105-164.27A may not exceed fifty thousand dollars ($50,000) a calendar year. This cap applies separately to each legal entity.

(g) Credit. – A taxpayer who pays a tax legally imposed by another state on a telecommunications service taxable under this section is allowed a credit against the tax imposed in this section.

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

(01) Ancillary service. – Defined in G.S. 105-164.3.

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

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

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

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

(5) Postpaid calling service. – A telecommunications service that is charged on a call-by-call basis and is obtained by making payment at the time of the call either through the use of a credit or payment mechanism, such as a bank card, travel card, credit card, or debit card, or by charging the call to a telephone number that is not associated with the origination or termination of the telecommunications service. A postpaid calling service includes a service that meets all the requirements of a prepaid wireline telephone calling service, except the exclusive use requirement.

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

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

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

SECTION 5. G.S. 105-164.13 is amended by adding the following subdivision to read:

"(54) The following telecommunications services and charges:

a. Telecommunications service that is a component part of or is integrated into a telecommunications service that is resold. This exemption does not apply to service purchased by a pay telephone provider who uses the service to provide pay telephone service. Examples of services that are resold include carrier charges for access to an intrastate or interstate interexchange network, interconnection charges paid by a provider of mobile telecommunications service, and charges for the sale of unbundled network elements. An unbundled network element is a network element, as defined in 47 U.S.C. § 153(29), to which access is provided on an unbundled basis pursuant to 47 U.S.C. § 251(c)(3).

b. Pay telephone service.

c. 911 charges imposed under G.S. 62A-4 or G.S. 62A-23 and remitted to the Emergency Telephone System Fund under G.S. 62A-7 or the Wireless Fund under G.S. 62A-24.

d. Charges for telecommunications service made by a hotel, motel, or another entity whose gross receipts are taxable under G.S. 105-164.4(a)(3) when the charges are incidental to the occupancy of the entity's accommodations.

e. Telecommunications service purchased by a State agency or a unit of local government for the North Carolina Information Highway or another data network owned or leased by the State or unit of local government."

SECTION 6. G.S. 105-164.14(b) and (c) read as rewritten:

"(b) Nonprofit Entities and Hospital Drugs. – A nonprofit entity included in the following list is allowed a semiannual refund of sales and use taxes paid by it under this Article on direct purchases of tangible personal property and services, other than ~~electricity and telecommunications~~ electricity, telecommunications service, and ancillary service, for use in carrying on the work of the nonprofit entity:

(1) Hospitals not operated for profit, including hospitals and medical accommodations operated by an authority created under the Hospital Authorities Law, Article 2 of Chapter 131E of the General Statutes.

(2) Educational institutions not operated for profit.

(3) Churches, orphanages, and other charitable or religious institutions and organizations not operated for profit.

(4) Qualified retirement facilities whose property is excluded from property tax under G.S. 105-278.6A.

Sales and use tax liability indirectly incurred by a nonprofit entity on building materials, supplies, fixtures, and equipment that become a part of or annexed to any building or structure that is owned or leased by the nonprofit entity and is being erected, altered, or repaired for use by the nonprofit entity for carrying on its nonprofit activities is considered a sales or use tax liability incurred on direct purchases by the nonprofit entity.

A hospital that is not allowed a refund under this subsection of sales and use taxes paid on its direct purchases of tangible personal property is allowed a semiannual refund of sales and use taxes paid by it on medicines and drugs purchased for use in carrying out its work.

The refunds allowed under this subsection for certain nonprofit entities and for medicines and drugs purchased by hospitals do not apply to organizations, corporations, and institutions that are owned and controlled by the United States, the State, or a unit of local government, except hospital facilities created under Article 2 of Chapter 131E of the General Statutes and nonprofit hospitals owned and controlled by a unit of local government that elect to receive semiannual refunds under this subsection instead of annual refunds under subsection (c).

A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund for the first six months of a calendar year is due the following October 15; a request for a refund for the second six months of a calendar year is due the following April 15.

(c) Certain Governmental Entities. – A governmental entity listed in this subsection is allowed an annual refund of sales and use taxes paid by it under this Article on direct purchases of tangible personal property and services, other than ~~electricity and telecommunications~~ electricity, telecommunications service, and ancillary service. Sales and use tax liability indirectly incurred by a governmental entity on building materials, supplies, fixtures, and equipment that become a part of or annexed to any building or structure that is owned or leased by the governmental entity and is being erected, altered, or repaired for use by the governmental entity is considered a sales or use tax liability incurred on direct purchases by the governmental entity for the purpose of this subsection. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the governmental entity's fiscal year. The Secretary shall make an annual report to the Department of Public Instruction and the Fiscal Research Division of the General Assembly by March 1 of the amount of refunds, identified by taxpayer, claimed under subdivisions (2b) and (2c) of this subsection over the preceding year.

This subsection applies only to the following governmental entities:

(1) A county.

(2) A city as defined in G.S. 160A-1.

(2a) A consolidated city-county as defined in G.S. 160B-2.

(2b) (2c) Repealed by Session Laws 2005-276, s. 7.51(a), effective July 1, 2005, and applicable to sales made on or after that date.

(3) A metropolitan sewerage district or a metropolitan water district in this State.

(4) A water and sewer authority created under Chapter 162A of the General Statutes.

(5) A lake authority created by a board of county commissioners pursuant to an act of the General Assembly.

(6) A sanitary district.

(7) A regional solid waste management authority created pursuant to G.S. 153A-421.

(8) An area mental health, developmental disabilities, and substance abuse authority, other than a single-county area authority, established pursuant to Article 4 of Chapter 122C of the General Statutes.

(9) A district health department, or a public health authority created pursuant to Part 1A of Article 2 of Chapter 130A of the General Statutes.

(10) A regional council of governments created pursuant to G.S. 160A-470.

(11) A regional planning and economic development commission or a regional economic development commission created pursuant to Chapter 158 of the General Statutes.

(12) A regional planning commission created pursuant to G.S. 153A-391.

(13) A regional sports authority created pursuant to G.S. 160A-479.

(14) A public transportation authority created pursuant to Article 25 of Chapter 160A of the General Statutes.

(14a) A facility authority created pursuant to Part 4 of Article 20 of Chapter 160A of the General Statutes.

(15) A regional public transportation authority created pursuant to Article 26 of Chapter 160A of the General Statutes, or a regional transportation authority created pursuant to Article 27 of Chapter 160A of the General Statutes.

(16) A local airport authority that was created pursuant to a local act of the General Assembly.

(17) A joint agency created by interlocal agreement pursuant to G.S. 160A-462 to operate a public broadcasting television station.

(18) Repealed by Session Laws 2001-474, s. 7, effective November 29, 2001.

(19) Repealed by Session Laws 2001-474, s. 7, effective November 29, 2001.

(20) A constituent institution of The University of North Carolina, but only with respect to sales and use tax paid by it for tangible personal property or services that are eligible for refund under this subsection acquired by it through the expenditure of contract and grant funds.

(21) The University of North Carolina Health Care System.

(22) A regional natural gas district created pursuant to Article 28 of Chapter 160A of the General Statutes."

SECTION 7. G.S. 105-164.27A(b) reads as rewritten:

"(b) Telecommunications Service. – A direct pay permit for telecommunications service authorizes its holder to purchase telecommunications service and ancillary service without paying tax to the seller and authorizes the seller to not collect any tax on a sale to the permit holder. A person who purchases ~~telecommunications service~~ these services under a direct pay permit must file a return and pay the tax due monthly to the Secretary. A direct pay permit issued under this subsection does not apply to any tax other than the tax on telecommunications service and ancillary service.

A call center that purchases telecommunications service that originates outside this State and terminates in this State may apply to the Secretary for a direct pay permit for telecommunications service and ancillary service. A call center is a business that is primarily engaged in providing support services to customers by telephone to support products or services of the business. A business is primarily engaged in providing support services by telephone if at least sixty percent (60%) of its calls are incoming."

SECTION 8. G.S. 105-164.44F(a) reads as rewritten:

"(a) Amount. – The Secretary must distribute to the cities part of the taxes imposed by G.S. 105-164.4(a)(4c) on telecommunications service and ancillary service. The Secretary must make the distribution within 75 days after the end of each calendar quarter. The amount the Secretary must distribute is eighteen and three one-hundredths percent (18.03%) of the net proceeds of the taxes collected during the quarter, minus two million six hundred twenty thousand nine hundred forty-eight dollars ($2,620,948). This deduction is one-fourth of the annual amount by which the distribution to cities of the gross receipts franchise tax on telephone companies, imposed by former G.S. 105-120, was required to be reduced beginning in fiscal year 1995-96 as a result of the "freeze deduction." The Secretary must distribute the specified percentage of the proceeds, less the "freeze deduction" among the cities in accordance with this section."

SECTION 9. G.S. 105-164.16 reads as rewritten:

"**§ 105-164.16. Returns and payment of taxes.**

(a) General. – Sales and use taxes are payable ~~quarterly, monthly, or semimonthly as specified in this section.~~ when a return is due. A return is due quarterly or monthly as specified in this section. A return must be filed with the Secretary on a form prescribed by the Secretary and in the manner required by the Secretary. A return must be signed by the taxpayer or the taxpayer's agent.

A sales tax return must state the taxpayer's gross sales for the reporting period, the amount and type of sales made in the period that are exempt from tax under G.S. 105-164.13 or are elsewhere excluded from tax, the amount of tax due, and any other information required by the Secretary. A use tax return must state the purchase price of tangible personal property that was purchased or received during the reporting period and is subject to tax under G.S. 105-164.6, the amount of tax due, and any other information required by the Secretary. Returns that do not contain the required information will not be accepted. When an unacceptable return is submitted, the Secretary will require a corrected return to be filed.

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

(b1) Monthly. – A taxpayer who is consistently liable for more than one hundred dollars ($100.00) ~~but less than ten thousand dollars ($10,000)~~ a month in State and local sales and use taxes must file a return and pay the taxes due on a monthly basis. A monthly return is due by the 20th day of the month following the calendar month covered by the return.

(b2) ~~Semimonthly.~~ Prepayment. – A taxpayer who is consistently liable for at least ten thousand dollars ($10,000) a month in State and local sales and use taxes must ~~pay the tax twice a month and must file a return on a monthly basis. One semimonthly payment covers the period from the first day of the month through the 15th day of the month. The other semimonthly payment covers the period from the 16th day of the month through the last day of the month. The semimonthly payment for the period that ends on the 15th day of the month is due by the 25th day of that month. The semimonthly payment for the period that ends on the last day of the month is due by the 10th day of the following month.~~

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

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

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

make a monthly prepayment of the next month's tax liability. The prepayment is due on the date a monthly return is due. The prepayment must equal at least sixty-five percent (65%) of any of the following:

(1) The amount of tax due for the current month.

(2) The amount of tax due for the same month in the preceding year.

(3) The average monthly amount of tax due in the preceding calendar year.

(b3) Category. – The Secretary must monitor the amount of State and local sales and use taxes paid by a taxpayer or estimate the amount of taxes to be paid by a new taxpayer and must direct each taxpayer to pay tax and file returns ~~in accordance with the appropriate schedule.~~ as required by this section. In determining the amount of taxes due from a taxpayer, the Secretary must consider the total amount due from all places of business owned or operated by the same person as the amount due from that person. A taxpayer must file a return and pay tax in accordance with the Secretary's ~~direction until notified in writing to file and pay under a different schedule.~~direction.

(c) Repealed by Session Laws 2001-427, s. 6(a), effective January 1, 2002, and applicable to taxes levied on or after that date.

(d) **(Effective for taxable years ending before January 1, 2010)** Use Tax on Out-of-State Purchases. – Use tax payable by an individual who purchases tangible personal property outside the State for a nonbusiness purpose is due on an annual basis. For an individual who is not required to file an individual income tax return under Part 2 of Article 4 of this Chapter, the annual reporting period ends on the last day of the calendar year and a use tax return is due by the following April 15. For an individual who is required to file an individual income tax return, the annual reporting period ends on the last day of the individual's income tax year, and the use tax must be paid on the income tax return as provided in G.S. 105-269.14.

(d) **(Effective for taxable years beginning on or after January 1, 2010)** Use Tax on Out-of-State Purchases. – Notwithstanding subsection (b), an individual who purchases tangible personal property outside the State for a nonbusiness purpose shall file a use tax return on an annual basis. The annual reporting period ends on the last day of the calendar year. The return is due by the due date, including any approved extensions, for filing the individual's income tax return."

SECTION 10. G.S. 105-113(b) reads as rewritten:

"(b) Report and Payment. – The tax imposed by this section is payable ~~quarterly, semimonthly,~~ quarterly or monthly as specified in this subsection. A return is due quarterly.

A water company or public sewerage company must pay tax quarterly when filing a return. An electric power company must pay tax in accordance with the schedule ~~that applies to its~~ and requirements that apply to payments of sales and use tax under G.S. 105-164.16 and must file a return quarterly. ~~An electric power company is not subject to interest on or penalties for an underpayment for a semimonthly or monthly payment period if the electric power company timely pays at least ninety-five percent (95%) of the amount due for each semimonthly or monthly payment period and includes the underpayment with the quarterly return for those semimonthly or monthly payment periods.~~

A quarterly return covers a calendar quarter and is due by the last day of the month that follows the quarter covered by the return. A taxpayer must submit a return on a form provided by the Secretary. The return must include the taxpayer's gross receipts from all property it owned or operated during the reporting period in connection with its business taxed under this section. A taxpayer must report its gross receipts on an accrual basis. A return must contain the following information:

(1) The taxpayer's gross receipts for the reporting period from business inside and outside this State, stated separately.

(2) The taxpayer's gross receipts from commodities or services described in subsection (a) that are sold to a vendee subject to the tax levied by this section or to a joint agency established under Chapter 159B of the General Statutes or a city having an ownership share in a project established under that Chapter.

(3) The amount of and price paid by the taxpayer for commodities or services described in subsection (a) that are purchased from others engaged in business in this State and the name of each vendor.

(4) For an electric power company the entity's gross receipts from the sale within each city of the commodities and services described in subsection (a)."

SECTION 11. G.S. 105-187.43 reads as rewritten:

"**§ 105-187.43. Payment of the tax.**

(a) Payment. – The tax imposed by this Article is payable ~~semimonthly in accordance with the schedule set in G.S. 105-164.16 for semimonthly payments of sales and use taxes.~~ monthly. A monthly payment is due by the 20th day of the month following the calendar month in which liability for the tax accrues. The tax imposed by this Article on piped natural gas delivered to a sales or transportation customer accrues when the gas is delivered. The tax payable on piped natural gas received by a person who has direct access to an interstate pipeline for consumption by that person accrues when the gas is received.

(b) ~~Small Underpayments. – A person is not subject to interest on or penalties for an underpayment of a semimonthly amount due if the person timely pays at least ninety-five percent (95%) of the amount due and includes the underpayment with the next return the person files.~~ Prepayment. – A taxpayer who is consistently liable for at least ten thousand dollars ($10,000) of tax a month must make a monthly prepayment of the next month's tax liability. This requirement applies when the taxpayer meets the threshold and the Secretary notifies the taxpayer to make prepayments. A prepayment is due on the date a monthly payment is due. The prepayment must equal at least sixty-five percent (65%) of any of the following:

(1) The amount of tax due for the current month.

(2) The amount of tax due for the same month in the preceding year.

(3) The average monthly amount of tax due in the preceding calendar year.

(c) Return. – A return is due quarterly. A quarterly return covers a calendar quarter and is due by the last day of the month that follows the quarter covered by the return."

SECTION 12. Sections 9 through 11 of this act become effective October 1, 2007. The remainder of this act becomes effective January 1, 2007.

HOUSE BILL 1915:
SSTA Sales Tax Defn/Sales Tax Payments

BILL ANALYSIS

Committee:	House Finance	**Date:**	May 23, 2006
Introduced by:	Rep. Hill	**Summary by:**	Cindy Avrette
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 1915 is a recommendation of the Revenue Laws Study Committee. It does two things:

- ***It modifies the definitions used in the sales and use tax law that apply to telecommunications to conform to the definitions adopted in the Streamlined Sales Tax Agreement. This part of the bill becomes effective January 1, 2007.***
- ***It replaces the semimonthly payment sales tax schedule with a single monthly payment and a prepayment of the next month's liability due on the same day as the monthly payment. This part of the bill would become effective October 1, 2007.***

DEFINITIONAL CHANGES: Sections 1 through 8 of the bill modify the definitions used in the sales and use tax law that apply to telecommunications services. The changes are made to adopt the definitions in the Streamlined Sales Tax Agreement. These changes become effective January 1, 2007.

Section 1 makes the following changes in G.S. 105-164.3, the definitional section of the sales and use tax laws:

- Adds a definition of the term "ancillary service" in new (01) because the definitions in the Streamlined Sales Tax Agreement separate ancillary services from telecommunications services. Current North Carolina law considers ancillary services to be part of telecommunications services. All of the ancillary services are currently taxed and will continue to be taxed.
- Modifies the definition of "prepaid telephone calling service" in (27) to include the newly defined terms for "prepaid wireless calling service" and prepaid wireline calling service." Current law does not distinguish between prepaid wireline and prepaid wireless. The definition of prepaid wireless was added to recognize that prepaid wireless includes whatever services can be obtained with the same card used to obtain wireless telecommunications service. Prepaid cards are taxed at the point of sale rather than as telecommunications when the minutes are used. Some services that are not within the definition of telecommunications service can be purchased with the card that authorizes prepaid wireless use. The current definition of prepaid telephone calling service has an exclusive use requirement that conflicts with the practice for prepaid wireless.
- Converts the current definition of prepaid telephone calling service into the definition of "prepaid wireline calling service" in new 27(a). This is a technical change for prepaid wireline with no change in meaning.
- Adds a definition for "prepaid wireless calling service" in new (27b). This does not have an exclusive use requirement, in contrast to prepaid wireline.
- Updates the definition for "Streamlined Agreement" in (45a) to include the latest (January 13, 2006) amendments.
- Conforms the definition of "telecommunications service" in (48) to the Streamlined definition and incorporates into the definition the appropriate inclusions and exclusions that are now in G.S. 105-

164.4C(b) and (c). (See also the new exemptions in G.S. 105-164.13(54) in Section 5.) As changed, the definition is the same as current law with two exceptions. The first is Universal Service Fund surcharges. These surcharges are part of the sales price and will be subject to tax. The second is paging service. Universal Service Fund surcharges cannot be "carved out" and remain as is because there is no Streamlined "carve out" in sales price or telecommunications service for this. Paging service could be carved out because there is a Streamlined definition for this, but this bill does not include that carve out. The subparts of new (48) match up with current law as follows:

Subpart in (48)	Location in Current Law
a. (info service)	105-164.4C(c)(12) and (13)
b. (sale, etc. of tpp)	105-164.4C(c)(9)
c. (advertising)	105-164.4C(c)(10)
d. (billing)	105-164.4C(c)(14)
e. (Internet)	105-164.4C(c)(13)
f. (cable and radio)	105-164.4C(c)(6)
g. (ancillary)	105-164.4C(b)(2)
h. (digital)	No specific exclusion but not taxed now.

Section 2 changes the tax imposition statute to add the now-separate category of "ancillary service" and to include non-telecommunications services that are sold as part of a prepaid wireless calling service.

Section 3 makes a conforming change to the sourcing statute to apply the new definition of prepaid wireless call service.

Section 4 makes conforming changes to the separate statute on telecommunications to include ancillary service and to apply the new definition of prepaid wireless calling service. The items that were in subsections (b) and (c) are now either part of the definition of telecommunications or are exempt in Section 5.

Section 5 moves to the exemption statute the items that were formerly excluded from the definition of telecommunications and are not intended to be taxed. The items in new (54) were all in G.S. 105-164.4C(c).

Sections 6 through 8 add the now separate category of "ancillary service" in the exemption statute (G.S. 105-164.14), in the direct pay permit statute (G.S. 105-164.27A), and in the local distribution statute (G.S. 105-164.44F).

SIMPLIFY SEMI-MONTHLY SALES TAX PAYMENTS: Taxpayers that are liable for at least $10,000 a month in sales tax, electric utility tax, or piped gas excise tax must pay tax twice a month. For these taxpayers, the month is split into two periods – the first day of the month through the 15th of the month, and the 16th of the month through the end of the month. The tax payment for the 1st through 15th period is due by the 25th of the same month and the tax payment for the 16th through the end of the month is due by the 10th day of the following month. Taxpayers therefore have 10 days after the end of a semimonthly period to make a payment.

In addition to the payments, these taxpayers also file a return. The sales tax return is due monthly by the 20th and the electric utility and piped gas returns are due quarterly by the end of the month after the close of the quarter.

Several large retailers in the Streamlined Sales Tax project asked North Carolina to look at its payment schedule to determine if it could require payments to be made only once a month. North Carolina is one of only a few states that require payments twice a month.

Sections 9 through 11 of the bill replace the semimonthly payment schedule with a single monthly payment and a prepayment of the next month's liability due on the same day as the monthly payment. The result is that taxpayers would have more time to gather data before filing a return and make payments on only one day of the month. Under the bill, the State receives the payment that would otherwise be due on the 25th in the form of a prepayment made on the 20th and it also receives some of the revenue it would have received on the 10th of the following month in the form of the prepayment made on the 20th. The State will experience a slight one-time increase in revenue in the first month that the prepayment schedule takes effect.

The prepayment must equal at least 65% of one of three thresholds:

- The current month's liability.
- The liability for the same month the preceding year.
- The average monthly liability for the past calendar year.

These thresholds are easily determined and eliminate the need for the taxpayer to calculate actual liability for periods of less than a month. The 65% threshold was chosen because it was suggested by the retailers who requested North Carolina to review its law and the prepayment date is about 2/3 of the time in a month. A similar method and threshold are already in place in Florida and Arkansas. Florida sets the prepayment threshold at 60% and Arkansas sets it at 80%.

The bill eliminates the provisions concerning penalty relief for small underpayments because the relief is no longer needed. The relief is provided under current law because the law requires taxpayers to calculate liability for short periods within 10 days after the end of the period. Under the bill, sales tax taxpayers have 20 days after the end of the month to file a return and electric utility and piped gas taxpayers have a full month after the end of a quarter to file a return.

This part of the bill becomes effective October 1, 2007.

H1915e1-SMRB

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 1915 (First Edition)

SHORT TITLE: SSTA Sales Tax Defn/Sales Tax Payments.

SPONSOR(S): Representative Hill

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:	See Assumptions and Methodology				
EXPENDITURES:	See Assumptions and Methodology				
POSITIONS (cumulative):					

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

EFFECTIVE DATE: Sections 9 through 11 (semi-monthly filers) becomes effective October 1, 2007. The remainder becomes effective January 1, 2007.

BILL SUMMARY: The legislation makes three changes related to the Streamlined Sales Tax Agreement (SSTA). First, it alters the definition of telecommunications services and adds a definition of "ancillary services" to the sales tax statutes. This change is required to comply with the Streamlined Agreement. Second, the bill changes the sales tax payment schedule for semi-monthly filers. Under existing law the state's largest taxpayers, those who regularly owe at least $10,000 a month in sales taxes, must make sales tax payments twice a month. The first payment is due the 25th of the month and reflects sales made between the 1st and 15th of that month. The second payment reflects sales made after the 16th day of the month, and is due the 10th day of the following month. The proposal replaces the twice a month payment with a single monthly payment. The new payment, due on the 20th, should reflect sales made in the previous month along with an estimated amount for the current month. The estimated amount is to be 65% of either 1) the current month's liability, 2) the liability for the same month in the previous year, or 3) the average monthly liability for the past calendar year. The taxpayer can choose their method of calculation. Finally, the legislation eliminates statutory provisions to deal with small underpayments; as such a provision is no longer necessary with the proposed pre-payment plan. While these last two changes are related to SSTA, they are not required for compliance with the Agreement.

ASSUMPTIONS AND METHODOLOGY: Sections 1 and 2 make several changes to telecommunications related definitions. Definitions altered or added include ancillary service, prepaid wireless calling service, and telecommunications service. The first to of these changes are technical in nature and are not expected to have a fiscal impact. The third – telecommunications service – actually consolidates and clarifies some definitions already addressed by the General Assembly in previous sessions. This change is also not expected to have a significant fiscal impact. Section 1 also updates the reference date for the Agreement, which has no fiscal affect.

Section 3 addresses the sourcing of sales of prepaid wireless services. Because it only impacts local revenues, no state impact is expected. Moreover, because the change is not expected to actually alter the treatment of these sales, no local impact is expected.

Section 4 makes conforming definitional changes and is not expected to have a fiscal impact.

Section 5 moves to the exemption statute the items that were formerly excluded from the definition of telecommunications and are not intended to be taxed. The items in exemption section were all in the prior telecommunication section statutes. No fiscal impact is expected.

Sections 6 – 8 make conforming changes by inserting the newly defined term 'ancillary services', with the term 'telecommunications services'. All items covered under the new definitions are currently taxed under the existing definition of telecommunications services. While the new definitions create two separate categories – ancillary services and telecommunications services – they are both subject to the general sales tax. As a result, this change is only technical and has no revenue impact.

Sections 9 – 11 alter the sales tax payment schedules for the state's largest retailers. According to the North Carolina Department of Revenue, these retailers represent approximately 68% of total sales tax collections. Because the legislation does not affect the retailer's liability there is no recurring cost or gain associated with the bill. However, the shift from semi-monthly to monthly payments does create a potential one time revenue change. By shifting the payment date for part of the liability from the 25th to the 20th, the state gains five days of interest on the float, creating a small revenue gain. However, because retailers can select which method they will use to calculate their pre-payment, there is a potential for a short term revenue loss, as the state would lose interest on the under-payment. The Department of Revenue indicates that if average pre-payments fall below 60% of actual liabilities, the state could see a small fiscal loss. Given the uncertainty surrounding retailer responses, it is not possible to estimate the potential loss or gain. However, data from the Department indicate that whatever change is seen in either direction would likely be substantially less than $1.0 million. There may also be some computer programming costs associated with the payment schedule change. However, at this point Fiscal Research cannot determine the exact cost associated with this computer change.

SOURCES OF DATA: North Carolina Department of Revenue.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Linda Millsaps and Brenna Erford

Official
Fiscal Research Division
Publication

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: May 19, 2006

Signed Copy Located in the NCGA Principal Clerk's Offices

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☐ Committee Substitute for

HB 1915 A BILL TO BE ENTITLED AN ACT TO INCORPORATE THE STREAMLINED SALES TAX DEFINITIONS CONCERNING TELECOMMUNICATIONS AND TO SIMPLIFY THE TAX PAYMENT REQUIREMENTS FOR SEMIMONTHLY TAXPAYERS.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

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

North Carolina General Assembly

House Committee on Finance

Minutes

~

June 1, 2006

The House Committee on Finance met on Thursday, June 1, 2006 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Alexander, Gibson, Howard, Luebke, McComas and Wainwright; Vice-Chairs Daughtridge, Hill, Ross, and Weiss; and Representatives B. Allen, Blackwood, Blust, Bordsen, Capps, Carney, Dockham, Faison, Fisher, Folwell, Glazier, Goforth, Hackney, Holliman, Jones, Lewis, Lucas, McGee, Rayfield, Underhill, Vinson, Walend, and Wiley. Also present were Sergeant-at-Arms Nell Casper, Fred Hines, Marvin Lee, and Dusty Rhodes. Staff persons present included Cindy Avrette, Rodney Bizzell, Brenna Erford, Linda Millsaps, Martha Walston, and Bill Weiss. The Agenda and Visitor Registration Sheet are attached and incorporated into these minutes as **attachments 1 and 2.**

Chairwoman Alexander called the meeting to order at 8:34 am and recognized the two (2) pages present: Peter Hartin of Wake County, sponsored by Representative B. Allen; and Marcus Jones of Wake County, sponsored by Speaker Black.

Chairwoman Alexander then referred the following bills to the House Finance Subcommittee on Occupancy Tax:

- HB 2259 – ELKIN OCCUPANCY TAX
- HB 2245 – HALIFAX OCCUPANCY TAX
- HB 2454 – ROBESON COUNTY OCCUPANCY TAX
- HB 2477 – DURHAM COUNTY OCCUPANCY TAX MODIFICATION
- HB 2684 – NEW HANOVER & WILMINTON OCCUPANCY TAX CHANGES

The first bill under the Committee's consideration was **HB 1963 – REVENUE LAWS TECH. & MOTOR FUEL TAX CHANGES** (see **attachment 3**). Chairwoman Alexander recognized Representative Howard who moved for the adoption of the proposed committee substitute for the Committee's consideration. The motion was adopted. Representative Luebke was then recognized and explained that the bill was a recommendation from the Revenue Laws Study Committee. He further stated that the bill only makes several technical changes to revenue laws which will improve the collection and administration of motor fuel taxes. Chairwoman Alexander then recognized Martha Walston from Fiscal Research who explained the few technical differences between the proposed committee substitute and the original bill. Following the explanation, Representative Underhill was recognized and noticed that a portion of the bill analysis was not given to the Committee members. Chairwoman Alexander then displaced the bill until the complete bill analysis could be distributed to the Committee.

The next bill considered by the Committee was **HB 2097 – PROPERTY TAX CHANGES** (see **attachment 4**). Chairwoman Alexander recognized Representative Brubaker, the primary sponsor on the bill, who explained that House Bill 2097 was also a Revenue Laws makes technical changes to property tax laws and is expected to have no fiscal impact. Following the explanation given by Representative Brubaker, Chairwoman Alexander recognized Representative Folwell who moved that House Bill 2097 be given a favorable report by the Committee. Seeing no further discussion, Chairwoman Alexander called the motion to a vote and it carried by consent.

Chairwoman Alexander then announced that the Committee would discuss a package of bills relating to changes to the state tax on motor fuel. She then recognized Martha. Walston of Fiscal Research who gave an overview of the following bills in the Motor Fuel Tax Bill Packet (see **attachment 5**):

- **HB 1802 – REDUCE MOTOR FUELS TAX**
- **HB 1842 – ENSURE INTEGRITY OF HIGHWAY TRUST FUND**
- **HB 1853 – CAP VARIABLE RATE OF GASOLINE EXCISE TAX**
- **HB 2172 – REDUCE AND CAP GAS TAX**
- **HB 2384 – CAP VARIABLE RATE OF THE GASOLINE EXCISE TAX**

Following the overview, Chairwoman Alexander recognized Representative Pate to explain House Bill 1802 (see **attachment 5**) of which he is a primary sponsor. Representative Pate explained that this bill caps the variable rate of the motor fuel tax to the rate from the latter half of 2004.

Representative Moore was then recognized to explain House Bill 1842 (see **attachment 5**). He stated that this bill would give a substantial increase in funding to the North Carolina Highway Trust Fund through periodic repayments to the Fund. Chairwoman Alexander then recognized Representative Capps who asked how repayments to the Trust Fund would be made. Representative Moore responded by stating that repayments would be made in installments over time. Bob Weiss from Fiscal Research was then recognized and noted that $1.3 billion would be needed to provide a complete repayment. Representative Underhill was recognized and stated that the bill might have some unintended consequences and that the repayments to the NC Highway Trust Fund may need to go back to 2001 instead of 1989, as set forth in the bill. Representative Rayfield then asked for an overview on the creation of the Highway Trust Fund. Chairwoman Alexander then recognized Bob Weiss from Fiscal Research who explained that the NC Highway Trust Fund was created in 1989 by the General Assembly to ensure that a stable source of revenue was set aside for new road projects.

Chairwoman Alexander then recognized Representative Goforth to present House Bill 2172 (see **attachment 5**). Representative Goforth said that he did not have any additional comments to make and he deferred any questions about the bill to staff.

As there were no questions on that bill, Chairwoman Alexander next recognized Representative Gibson to explain House Bill 2384. He stated that the bill sets the cap on the gasoline tax at its current level and does the least damage to the Highway Trust Fund. He stated the bill also contained a consumer protection component that allows the Attorney General to begin to address price gouging by gasoline retailers in times of emergency and supply shocks.

Representative Hackney was then recognized by Chairwoman Alexander and asked Mr. Weiss from Fiscal Research about the NC Highway Trust Fund "hold harmless" clause. Mr. Weiss concluded that the raiding of the trust fund as some people claim is referring to the General Assembly holding the General Fund harmless as set forth in the inception of the Highway Trust

Fund. Chairwoman Alexander then recognized Representative Blackwood who posed a question to Representative Gibson about House Bill 2384. He asked if gasoline retailers will likely shut down gasoline pumps in times of emergency to avoid being prosecuted under the consumer protection provision of the bill. Representative Gibson responded saying that the consumer protection component of the bill was intended to give consumers greater confidence when emergency situations arise. Chairwoman Alexander then concluded the discussion on the gas tax bills, informing the Committee members that the Committee staff would be working on the issues raised by the Committee toward the eventual formulation of a consensus bill.

Following the discussion of the Motor Fuel Tax Packet, Chairwoman Alexander replaced the proposed committee substitute for House Bill 1963 (see **attachment** 3) after the complete bill analysis was distributed to members of the Committee. Representative Hill was recognized and moved for favorable report to the proposed committee substitute and an unfavorable report to the original bill. As there was no further debate, Chairwoman Alexander called the motion to a vote and it carried without objection.

The final bill discussed by the Committee was **HB 2047 – VIDEO SERVICE COMPETITION ACT** (see **attachment 6**). Chairwoman Alexander first recognized Representative Carney, a co-sponsor on the bill, to offer comments on the bill. She stated that this bill was a recommendation from the Revenue Laws Study Committee and delivered an overview of the bill. At the conclusion of the overview, Representative Luebke, another primary sponsor of the bill, was recognized and while offering his general support of the bill, also referred to reservations he held in the way it addresses and funds public access channels. Representative McComas, another co-sponsor on the bill, was then recognized and requested support for the bill from the members of the committee. Chairwoman Alexander then recognized the fourth co-sponsor on the bill, Representative Wainwright, who cautioned the committee members from moving away from the consensus and the balance provided by the proposed committee substitute currently before the Committee.

Following this, Chairwoman Alexander asked members of the public to provide their statements in writing (if they so desired) to the chairpersons of the Committee. She then recognized the following members from the public to speak on the bill:

- Connie Book from Elon University who spoke regarding the great complexity of the bill.
- Ellis Hankins from the North Carolina League of Municipalities who stated that his membership still has serious concerns about the bill. Additional comments are located in **attachment 6.**
- Eugene Weeks, a resident of Wake County, who offered support for the bill.
- Debra DeCamillis, a resident of Wake County, who stated that she would prefer to pay for only the channels she watches. She urged the Committee to approve of the proposed committee substitute as the bill adds additional choices for consumers.
- Al Ripley, an attorney with the North Carolina Justice Center, who stated that "build-out" needed to be included in the bill. He also mentioned that the Attorney General needed to be able to enforce the discrimination clause found in the bill.
- Bill Wilson from the American Association for Retired Persons stated that he believed that the bill needed to contain detailed requirements for franchising.
- Reverend William Barber from the National Association for the Advancement of Colored People stated that "build-out" provisions should be added because it would do a better job at stopping discrimination.

- Marco Zarate, a resident of the Wake County latino community, offered his support for the bill because it would give consumers additional choices.
- Esterine Davis with ElectriCities stated that her organization shared similar reservations that reflect the aforementioned concerns of the League of Municipalities.
- Hart Pillow, a resident of Durham County, spoke about PEG access and the need for additional funding.
- Chad Johnson from the People's Channel of Orange County stated that the bill needed to make sure that PEG channels are funded completely.
- Stan Pace from Verizon spoke about the discrimination clause in the bill. He gave statistics that provide evidence that Verizon is not discriminating in its video programming business in other states.
- Randy Frazier from Time Warner Cable stated that the cable industry is ready to compete but asked that tax parity be given in order for all to compete on a level playing field.
- Mark Prak from the NC Cable and Telecommunications Association spoke about the hard work that has taken place so far and offered his support for the bill.
- Kathy Hartkopf of Freedom Works spoke in support of the bill because it would give more availability for video programming for citizens across North Carolina.
- Rob Thompson from the North Carolina Public Interest Research Group offered reservations about the bill because of the way the Attorney General's office lacked adequate funding to handle consumer complaints under the bill.
- Wally Bowen from the NC Coalition of Community Media Centers stated that this bill does not offer enough opportunities for PEG channels.
- George Peery from Marshall College announced his opposition for the bill.
- Greg McCloud from the Attorney General's office noted his reservations with the bill given the lack of funding and staff provided to the Attorney's General's office to enforce the anti-discrimination requirements outlined in the bill.
- Mack Pearsall, an individual from Asheville and Chair of the North Carolina Progress Board, spoke in opposition to the bill.
- Mike Williams from the City of Raleigh delivered written comments on the bill (see **attachment 6**).

As all those wishing to speak had been recognized and the Committee's time had then expired, Chairwoman Alexander then adjourned the meeting at 9:59 am.

Respectfully submitted,

Representative Martha Alexander
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:
1. Agenda

2. Visitor Registration Sheet
3. House Bill 1963 (and related materials)
4. House Bill 2097 (and related materials)
5. Gas Tax Bills Packet (Contains House Bill 1802, House Bill 1842, House Bill 1853, House Bill 2172, and House Bill 2384; Also contains related materials)
6. House Bill 2047 (and related materials)

AGENDA

House Finance Committee

ATTACHMENT 1

Thursday, June 1, 2006
8:30 a.m.
Room 544 LOB
Chaired by: Rep. Alexander

Co-Chairs

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

Call to Order

Introduction of Pages

Bills:

HB 1802 **REDUCE MOTOR FUELS TAX** *Reps. Allred, Pate, Brown, & Hilton*
(FOR DISCUSSION ONLY)

HB 1842 **ENSURE INTEGRITY OF HIGHWAY TRUST FUND**
(FOR DISCUSSION ONLY) *Reps. Moore, Clary, LaRoque, & Daughtridge*

HB 1853 **CAP VARIABLE RATE OF GASOLINE EXCISE TAX**
(FOR DISCUSSION ONLY) *Reps. Kiser, Justus, & Howard*

HB 1963 **REVENUE LAWS TECH. & MOTOR FUEL TAX CHANGES** *Rep. Luebke*

HB 2047 **VIDEO SERVICE COMPETITION ACT**
Reps. Carney, Luebke, McComas, & Wainwright

HB 2097 **PROPERTY TAX CHANGES** *Rep. Brubaker*

HB 2172 **REDUCE AND CAP GAS TAX** *Reps. Harrell & Goforth*
(FOR DISCUSSION ONLY)

HB 2384 **CAP VARIABLE RATE OF THE GASOLINE EXCISE TAX**
(FOR DISCUSSION ONLY) *Reps. Gibson, Coates, Underhill, & Goforth*

Adjournment

CORRECTED NOTICE:
HB 1802 - ADDED

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

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

DAY & DATE: **Thursday, June 1, 2006**

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

LOCATION: **Room 544, LOB**

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

HB 1802 – REDUCE MOTOR FUELS TAX (FOR DISCUSSION ONLY) – Reps. Allred, Pate, Brown, & Hilton

HB 1842 – ENSURE INTEGRITY OF HIGHWAY TRUST FUND (FOR DISCUSSION ONLY) – Reps. Moore, Clary, LaRoque, & Daughtridge

HB 1853 – CAP VARIABLE RATE OF GASOLINE EXCISE TAX (FOR DISCUSSION ONLY) – Reps. Kiser, Justus, & Howard

HB 1963 – REVENUE LAWS TECH. & MOTOR FUEL TAX CHANGES – Rep. Luebke

HB 2047 – VIDEO SERVICE COMPETITION ACT – Reps. Carney, Luebke, McComas, & Wainwright

HB 2097 – PROPERTY TAX CHANGES – Rep. Brubaker

HB 2172 – REDUCE AND CAP GAS TAX (FOR DISCUSSION ONLY) – Reps. Harrell & Goforth

HB 2384 – CAP VARIABLE RATE OF THE GASOLINE EXCISE TAX (FOR DISCUSSION ONLY) – Reps. Gibson, Coates, Underhill, & Goforth

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

I hereby certify this notice was filed by the committee clerk at the following offices at **2:48 pm** on **May 31, 2006**:

X Principal Clerk
X Reading Clerk - House Chamber

Jason A. Cannon (Committee Clerk)

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

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

DAY & DATE: **Thursday, June 1, 2006**

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

LOCATION: **Room 544, LOB**

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

HB 1842 – ENSURE INTEGRITY OF HIGHWAY TRUST FUND (FOR DISCUSSION ONLY) – Reps. Moore, Clary, LaRoque, & Daughtridge

HB 1853 – CAP VARIABLE RATE OF GASOLINE EXCISE TAX (FOR DISCUSSION ONLY) – Reps. Kiser, Justus, & Howard

HB 1963 – REVENUE LAWS TECH. & MOTOR FUEL TAX CHANGES – Rep. Luebke

HB 2047 – VIDEO SERVICE COMPETITION ACT – Reps. Carney, Luebke, McComas, & Wainwright

HB 2097 – PROPERTY TAX CHANGES – Rep. Brubaker

HB 2172 – REDUCE AND CAP GAS TAX (FOR DISCUSSION ONLY) – Reps. Harrell & Goforth

HB 2384 – CAP VARIABLE RATE OF THE GASOLINE EXCISE TAX (FOR DISCUSSION ONLY) – Reps. Gibson, Coates, Underhill, & Goforth

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

I hereby certify this notice was filed by the committee clerk at the following offices at **11:05 am** on **May 31, 2006**:

X Principal Clerk
X Reading Clerk - House Chamber

Jason A. Cannon (Committee Clerk)

ATTACHMENT 2

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 1, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Andy Romanet	NCLM
Lisa Bernier	SECURE
Roy Loflin	Freedom Works, Orange County
Robin Staudt	Orange County Freedom Works
[illegible]	Bell South
Chad Johnston	The Peoples Channel
Anna Whitley	The Peoples Channel
Hart Pillow	Durham, N.C., citizen
Ryan Presley	Rep. Glazier
Dana Simpson	Senate Pages
Jeff Wolfe	Daily Bulletin

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 1, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sue Breckenridge	Time Warner Cable
PAT SMITH	TIME WARNER CABLE
Kathy Hartkopf	Freedom Works
Reid Hartzog	Time Warner Cable
Michael Williams	City of Raleigh
Doris Weaver	NC CWA Political Council
Tom Coley	"
Manisha Devasthali	NA
BRAD PHILLIPS	TIME WARNER CABLE
GARY FREDERICK	TIME WARNER CABLE
Michele VARSANO	Time Warner Cable

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 1, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Chris VanName	Time Warner Cable
Alan Mason	Time Warner Cable
Martin Feaver	Time Warner Cable
[illegible] Knight-Johnson	Time Warner Cable
Joan Yarbrough	Time Warner Cable
[illegible]	[illegible]
Mary Thomson	RCBIC
Greg Rudford	NC DOR
Tom Lawrence	Time Warner Cable
Dick Bracey	Time Warner Cable
Cindy Keene	Time Warner Cable

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 1, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kyle Wallace	Time Warner Cable. Raleigh
DK McLaughlin	Time Warner Cable
Eric Collins	Time Warner Cable
Rob Thompson	NCPDRG
Mitch Kokai	John Locke Foundation
B Wilson	AARP
Ed Fyre [illegible]	BPWNC
Jami [illegible]	NCHA
[illegible]	[illegible]
Stan Pace	Verizon
Clyde White	Bell South

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 1, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jill Braina	Public Strategies
Byron Nelson	Nelson & Associates
Janice Davidson	DOR - Motor Fuels
Train Carlisle	DOR - Motor Fuels
John Panza	DOR - Motor Fuels
Mark Foster	NCDOT
Ben Matchas	NCSCA
Bob Fraser	TWE
Betty Tuttle	
Albert Echel	Corning
Bob Slocum	NCFA

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 1, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jeff VAN Dyke	BELL South
Charlie Dell	NCTA
Leanne Wood	NCSBA
Norris Tolson	Sec DOR
Ken Melton	D.O.R.
Al Ripley	NC Justice Ctr
Rev W. Barber	NC NAACP
Glenn Norris	Public School Forum
Amy Schulder	Hobbs & Co
Beverly	LBA

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 1, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Elizabeth Dalton	NCRMA
Steve Brewer	Embarq
Bob Weiss	N.C. Alliance of Independent Telcos
Dwight Allen	Smith Anderson
LOUIS PATE	NC HOUSE
ELLIS HANKINS	NCLM
Catherine Davies	Electric Cities of NC
Doug Howey	NCPMA
Wally Bowen	NC Coalition of Community Media Centers
John McMillan	MFOS
David Baker	NCDOR

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 1, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Eugene Weeks	2509 Foxgate Dr. Raleigh, NC 27610
Debra DeCamillis	2809 Steeplechase Ct. Raleigh 27613
Stephanie Dorko	Charlotte Chamber
Bridget Paschal	NC Utilities Commission Staff
Daniel Long	NCUC Staff
Lemuel W. Hinton	NCUC staff
Mitch Peele	NC Farm Bureau
[illegible]	APEX RESIDENT
Andy Sabol	NC DOR
Anna Mitchell	NC DOR
John Long	Martin Marietta Materials

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 1, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Pete Rodda	Forsyth Co Tax Assessor/Collector
Johanna Reese	DOT
BERRY JENKINS	CAROLINAS AGC
Andrew Meehan	NCFEL
Susanne Stocks	NCRA
Cam Cruz	BPMHL
Paul Meyer	NCACC
Tom ADAMS	TIME WARNER CABLE
Marcus Tratten	Brooks Pierce
[illegible]	[illegible]
Lisa Martin	NC Home Builders

VISITOR REGISTRATION SHEET

FINANCE — 6-1-02

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
[illegible]	[illegible]
Stacey Montgomery	SOS

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1963*
PROPOSED COMMITTEE SUBSTITUTE H1963-CSLA-35 [v.5]

5/31/2006 10:44:39 PM

Short Title: Revenue Laws Tech. & Motor Fuel Tax Changes. (Public)

Sponsors:

Referred to:

May 15, 2006

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES TO THE REVENUE LAWS AND RELATED STATUTES AND TO IMPROVE THE COLLECTION AND ADMINISTRATION OF THE MOTOR FUEL TAX.

The General Assembly of North Carolina enacts:

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

"**§ 105-113.82. Distribution of part of beer and wine taxes.**

(a) Amount, Method. – The Secretary shall distribute annually the following percentages of the net amount of excise taxes collected on the sale of malt beverages and wine during the preceding 12-month period ending March 31, less the amount of the net proceeds credited to the Department of ~~Agriculture and Consumer Services~~ Commerce under G.S. 105-113.81A, to the counties and cities in which the retail sale of these beverages is authorized in the entire county or city:

(1) Of the tax on malt beverages levied under G.S. 105-113.80(a), twenty-three and three-fourths percent (23¾%);

(2) Of the tax on unfortified wine levied under G.S. 105-113.80(b), sixty-two percent (62%); and

(3) Of the tax on fortified wine levied under G.S. 105-113.80(b), twenty-two percent (22%).

If malt beverages, unfortified wine, or fortified wine may be licensed to be sold at retail in both a county and a city located in the county, both the county and city shall receive a portion of the amount distributed, that portion to be determined on the basis of population. If one of these beverages may be licensed to be sold at retail in a city located in a county in which the sale of the beverage is otherwise prohibited, only the city shall receive a portion of the amount distributed, that portion to be determined on the basis of population. The amounts distributed under subdivisions (1), (2), and (3) shall be computed separately."

SECTION 2. G.S. 105-122(d) reads as rewritten:

"(d) After determining the proportion of its total capital stock, surplus and undivided profits as set out in subsection (c) of this section, which amount ~~so determined~~ shall ~~in no case~~ not be less than fifty-five percent (55%) of the appraised value as determined for ad valorem taxation of all the real and tangible personal property in this State of each ~~such~~ corporation ~~plus the total appraised value of intangible property returned for taxation of intangible personal property as herein specified~~ nor less than its total actual investment in tangible property in this State, every corporation taxed under this section shall annually pay to the Secretary of Revenue, at the time the report and statement are due, a franchise or privilege ~~tax, which is hereby levied~~ tax at the rate of one dollar and fifty cents ($1.50) per one thousand dollars ($1,000) of the total amount of capital stock, surplus and undivided profits as ~~herein provided.~~ provided in this section. The tax imposed in this section shall ~~in no case~~ not be less than thirty-five dollars ($35.00) and shall be for the privilege of carrying on, doing business, and/or the continuance of articles of incorporation or domestication of each ~~such~~ corporation in this State. Appraised value of tangible property including real estate ~~shall be~~ is the ad valorem valuation for the calendar year next preceding the due date of the franchise tax return. ~~Appraised value of intangible property shall be the total gross valuation required to be reported for intangible tax purposes on April 15 coincident with or next preceding the due date of the franchise tax return.~~ The term "total actual investment in tangible property" as used in this section ~~shall be construed to mean~~ means the total original purchase price or consideration to the reporting taxpayer of its tangible properties, including real estate, in this State plus additions and improvements thereto less reserve for depreciation as permitted for income tax purposes, and also less any indebtedness incurred and existing by virtue of the purchase of any real estate and any permanent improvements made thereon. In computing "total actual investment in tangible personal property" there shall also be deducted reserves for the entire cost of any air-cleaning device or sewage or waste treatment plant, including waste lagoons, and pollution abatement equipment purchased or constructed and installed which reduces the amount of air or water pollution resulting from the emission of air contaminants or the discharge of sewage and industrial wastes or other polluting materials or substances into the outdoor atmosphere or into streams, lakes, or rivers, upon condition that the corporation claiming ~~such~~ this deduction shall furnish to the Secretary a certificate from the Department of Environment and Natural Resources or from a local air pollution control program for air-cleaning devices located in an area where the Environmental Management Commission has certified a local air pollution control program pursuant to G.S. 143-215.112 certifying that said Department or local air pollution control program has found as a fact that the air-cleaning device, waste treatment plant or pollution abatement equipment purchased or constructed and installed as above described has actually been constructed and installed and that ~~such~~ the device, plant or equipment complies with the requirements of the Environmental Management Commission or local air pollution control program with respect to ~~such~~ the devices, plants or equipment, that ~~such~~ the device, plant or equipment is being effectively operated in accordance with the terms and conditions set forth in the permit, certificate

of approval, or other document of approval issued by the Environmental Management Commission or local air pollution control program and that the primary purpose ~~thereof~~ is to reduce air or water pollution resulting from the emission of air contaminants or the discharge of sewage and waste and not merely incidental to other purposes and functions. The cost of constructing facilities of any private or public utility built for the purpose of providing sewer service to residential and outlying areas ~~shall be~~ is treated as deductible for the purposes of this section; the deductible liability allowed by this section shall apply only with respect to ~~such~~ pollution abatement plants or equipment constructed or installed on or after January 1, 1955."

SECTION 3.(a) G.S. 105-130.2 reads as rewritten:

"...

(4a) Gross income. – Defined in section 61 of the Code.

~~(4a)~~(4b) Income year. – The calendar year or the fiscal year upon the basis of which the net income is computed under this Part. If no fiscal year has been established, the income year is the calendar year. In the case of a return made for a fractional part of a year under the provisions of this Part or under rules adopted by the Secretary, the income year is the period for which the return is made.

..."

SECTION 3.(b) G.S. 105-114(b)(4) reads as rewritten:

"(4) Income year. – Defined in G.S. ~~105-130.2(5).~~105-130.2(4b)."

SECTION 4.(a) G.S. 105-130.47(a) reads as rewritten:

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

(1) Highly compensated individual. – An individual who directly or indirectly receives compensation in excess of one million dollars ($1,000,000) for personal services with respect to a single production. An individual receives compensation indirectly when a production company pays a personal service company or an employee leasing company that pays the individual.

(2) Live sporting event. – A scheduled sporting competition, game, or race that is not originated by a production company, but originated solely by an amateur, collegiate, or professional organization, institution, or association for live or tape-delayed television or satellite broadcast. A live sporting event ~~shall~~ does not include commercial advertising, an episodic television series, a television pilot, a music video, a motion picture, or a documentary production ~~where any~~in which sporting events are presented through archived historical footage or similar footage ~~depicting earlier live sporting events that originated more than thirty days before the time of such usage.~~taken at least thirty days before it is used.

(3) Production company. – Defined in G.S. 105-164.3.

(4) Qualifying expenses. – The sum of the ~~total amount~~following amounts spent in this State ~~for the following~~ by a production company in

connection with a ~~production:~~production, less the amount paid to a highly compensated individual:

a. Goods and services leased ~~or purchased by the production company.~~purchased. For goods with a purchase price of twenty-five thousand dollars ($25,000) or more, the amount included in qualifying expenses is the purchase price less the fair market value of the good at the time the production is completed.

b. Compensation and ~~wages paid by the production company, other than amounts paid to a highly compensated individual,~~ wages on which ~~the production company remitted~~ withholding payments are remitted to the Department of Revenue under Article 4A of this Chapter."

SECTION 4.(b) G.S. 105-151.29(a) reads as rewritten:

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

(1) Highly compensated individual. – An individual who directly or indirectly receives compensation in excess of one million dollars ($1,000,000) for personal services with respect to a single production. An individual receives compensation indirectly when a production company pays a personal service company or an employee leasing company that pays the individual.

(2) Live sporting event. – A scheduled sporting competition, game, or race that is not originated by a production company, but originated solely by an amateur, collegiate, or professional organization, institution, or association for live or tape-delayed television or satellite broadcast. A live sporting event ~~shall~~ does not include commercial advertising, an episodic television series, a television pilot, a music video, a motion picture, or a documentary production ~~where any~~in which sporting events are presented through archived historical footage or similar footage ~~depicting earlier live sporting events that originated more than thirty days before the time of such usage.~~taken at least thirty days before it is used.

(3) Production company. – Defined in G.S. 105-164.3.

(4) Qualifying expenses. – The sum of the ~~total amount~~following amounts spent in this State ~~for the following~~ by a production company in connection with a ~~production:~~production, less the amount paid to a highly compensated individual:

a. Goods and services leased or ~~purchased by the production company.~~purchased. For goods with a purchase price of twenty-five thousand dollars ($25,000) or more, the amount included in qualifying expenses is the purchase price less the fair market value of the good at the time the production is completed.

b. Compensation and ~~wages paid by the production company, other than amounts paid to a highly compensated individual,~~wages on which ~~the production company remitted~~ withholding payments are remitted to the Department of Revenue under Article 4A of this Chapter."

SECTION 4.(c) G.S. 105-259(b) reads as rewritten:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

~~(32) To provide the report required under G.S. 105-164.14(c) to the Department of Public Instruction and the Fiscal Research Division of the General Assembly.~~

...

(36) To furnish to a taxpayer claiming a credit under G.S. 105-130.47 or G.S. 105-151.29 information used by the Secretary to adjust the amount of the credit claimed by the taxpayer."

SECTION 5.(a) G.S. 105-164.3(49) reads as rewritten:

"(49) Use. – Means and includes the exercise of any right or power or dominion whatsoever over tangible personal property or over any service subject to tax under this Article by a purchaser thereof and includes, but is not limited to, any withdrawal from storage, distribution, installation, affixation to real or personal property, or exhaustion or consumption of tangible personal property or any service subject to tax under this Article by the owner or purchaser thereof, but does not include the sale of tangible personal property or of any service subject to tax under this Article in the regular course of business."

SECTION 5.(b) G.S. 105-164.16(a) reads as rewritten:

"(a) General. – Sales and use taxes are payable quarterly, monthly, or semimonthly as specified in this section. A return is due quarterly or monthly as specified in this section. A return must be filed with the Secretary on a form prescribed by the Secretary and in the manner required by the Secretary. A return must be signed by the taxpayer or the taxpayer's agent.

A sales tax return must state the taxpayer's gross sales for the reporting period, the amount and type of sales made in the period that are exempt from tax under G.S. 105-164.13 or are elsewhere excluded from tax, the amount of tax due, and any other information required by the Secretary. A use tax return must state the purchase price of tangible personal property or services sourced to this State that ~~was~~ were purchased or received during the reporting period and ~~is~~ are subject to tax under G.S. 105-164.6, the amount of tax due, and any other information required by the Secretary. Returns that do not contain the required information will not be accepted. When an unacceptable return is submitted, the Secretary will require a corrected return to be filed."

SECTION 6. G.S. 105-164.6(c) reads as rewritten:

"(c) Credit. – A credit is allowed against the tax imposed by this section for the following:

(1) The amount of sales or use tax paid on the item to this State. Payment of sales or use tax to this State on an item by a retailer extinguishes the liability of a purchaser for the tax imposed under this section.

(2) The amount of sales or use tax paid on the item to another state. If the amount of tax paid to the other state is less than the amount of tax imposed by this section, the difference is payable to this State. The credit allowed by this subdivision does not apply to tax paid to a state that does not grant a similar credit for sales or use taxes paid in North Carolina."

SECTION 7. G.S. 105-164.7 reads as rewritten:

"**§ 105-164.7. Sales tax part of purchase price.**

Every retailer subject to the tax levied in G.S. 105-164.4 shall at the time of selling or delivering or taking an order for the sale or delivery of taxable tangible personal property or a taxable service, or collecting the sales price, add to the sales price the amount of tax due. The tax constitutes a part of the purchase price, is a debt from the purchaser to the retailer until paid, and is recoverable at law in the same manner as other debts. The tax must be stated and charged separately from the sales price, shown separately on the retailer's sales records, and paid by the purchaser to the retailer as trustee for and on account of the State. The retailer is liable for the collection of the tax and for its payment to the Secretary. The retailer's failure to charge the tax to or to collect the tax from the purchaser does not affect this liability. It is the intent of this Article that the tax be added to the sales price of tangible personal property and services when sold at retail and be borne and passed on to the customer, instead of being borne by the retailer."

SECTION 8.(a) G.S. 105-164.13(1a) reads as rewritten:

"(1a) Sales of the following to a farmer, as defined in subdivision (1) of this section:

a. A container ~~sold to a farmer, as defined in subdivision (1) of this section,~~ used for a purpose set out in ~~that~~ subdivision (1) of this section or in packaging and transporting the farmer's product for sale.

b. A grain, feed, or soybean storage facility, and parts and accessories attached to the facility."

SECTION 8.(b) G.S. 105-164.13(4e) is repealed.

SECTION 9. G.S. 105-164.14(k) reads as rewritten:

"(k) Reports. – The Department of Revenue shall publish by May 1 of each year the following information itemized by taxpayer for the 12-month period ending the preceding December 31:

(1) The number of taxpayers claiming a refund allowed in subsections (a1), (g), (h), (i), ~~and (j)~~(j), and (*l*) of this section.

(2) The total amount of purchases with respect to which refunds were claimed.

(3) The total cost to the General Fund of the refunds claimed."

SECTION 10. G.S. 105-164.15A reads as rewritten:

"**§ 105-164.15A. Effective date of rate changes for services.**

The effective date of a rate change for a service taxable under this Article is administered as follows:

(1) For a rate increase, the new rate applies to the first billing period that starts on or after the effective date. For a service billed after it is provided, the first billing period starts on the effective date. For a service billed before it is provided, the first billing period starts on the first day of the month after the effective date.

(2) For a rate decrease, the new rate applies to bills rendered on or after the effective date."

SECTION 11. G.S. 105-187.52 reads as rewritten:

"**§ 105-187.52. Administration.**

(a) Administration. – The privilege taxes imposed by this Article are in addition to the State use tax. Except as otherwise provided in this Article, the collection and administration of these taxes is the same as the State use tax imposed by Article 5 of this Chapter.

(b) Credit. – A credit is allowed against the tax imposed by this Article for the amount of a sales or use tax, privilege or excise tax, or substantially equivalent tax paid to another state. The credit allowed by this subsection does not apply to tax paid to another state that does not grant a similar credit for the privilege tax paid in North Carolina."

SECTION 12.(a) G.S. 105-233 and G.S. 105-234 are repealed.

SECTION 12.(b) G.S. 105-236 reads as rewritten:

"**§ 105-236. ~~Penalties.~~Penalties; situs of violations; penalty disposition.**

(a) Penalties. – ~~Penalties assessed by the Secretary under this Subchapter are assessed as an additional tax. The clear proceeds of any civil penalties levied pursuant to subdivisions (3), (4), (5)a., and (6) of this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Except as otherwise provided by law, and subject to the provisions of G.S. 105-237, the following penalties shall be applicable:~~The following civil penalties and criminal offenses apply:

(1) Penalty for Bad Checks. – When the bank upon which any uncertified check tendered to the Department of Revenue in payment of any obligation due to the Department returns the check because of insufficient funds or the nonexistence of an account of the drawer, the Secretary shall assess a penalty equal to ten percent (10%) of the check, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). This penalty does not apply if the Secretary finds that, when the check was presented for payment, the drawer of the check had sufficient funds in an account at a financial institution ~~in this State~~ to pay the check and, by inadvertence, the

drawer of the check failed to draw the check on the account that had sufficient funds.

...

~~(11) Any violation of Subchapter I, V, or VIII of this Chapter or of Article 3 of Chapter 119 of the General Statutes is considered an act committed in part at the office of the Secretary in Raleigh. The certificate of the Secretary that a tax has not been paid, a return has not been filed, or information has not been supplied, as required by law, is prima facie evidence that the tax has not been paid, the return has not been filed, or the information has not been supplied.~~

(12) Repealed by Session Laws 1991, c. 45, s. 27.

(b) Situs. – Violation of a tax law is considered an act committed in part at the office of the Secretary in Raleigh. The certificate of the Secretary that a tax has not been paid, a return has not been filed, or information has not been supplied, as required by law, is prima facie evidence that the tax has not been paid, the return has not been filed, or the information has not been supplied.

(c) Penalty Disposition. – Civil penalties assessed by the Secretary are assessed as an additional tax. The clear proceeds of civil penalties assessed by the Secretary must be credited to the Civil Penalty and Forfeiture Fund, established in G.S. 115C-457.1."

SECTION 12.(c) G.S. 105-449.48 and G.S. 105-449.127 are repealed.

SECTION 12.(d) G.S. 105-449.49 reads as rewritten:

"**§ 105-449.49. Temporary permits.**

(a) Issuance. – Upon application to the Secretary and payment of a fee of fifty dollars ($50.00), a motor carrier may obtain a temporary permit authorizing the carrier to operate a vehicle in the State for three days without registering the vehicle in accordance with G.S. ~~105-449.47 for not more than three days.~~ 105-449.47. A motor carrier to whom a temporary permit has been issued may elect not to report its operation of the vehicle during the three-day period. Fees collected under this subsection are credited to the Highway Fund.

(b) Refusal. – The Secretary may refuse to issue a temporary permit to any of the following:

(1) A motor carrier whose registration has been withheld or revoked.

(2) A motor carrier who the Secretary determines is evading payment of tax through the successive purchase of temporary permits."

SECTION 13.(a) G.S. 105-449.65(b) reads as rewritten:

"(b) Multiple Activity. – A person who is engaged in more than one activity for which a license is required must have a separate license for each activity, unless this subsection provides otherwise. A person who is licensed as a supplier is considered to have a license as a distributor. A person who is licensed as an occasional importer or a tank wagon importer is not required to obtain a separate license as a distributor unless the importer is also purchasing motor fuel, at the terminal rack, from an elective or permissive supplier who is authorized to collect and remit the tax to the State. A person who is licensed as a distributor is not required to obtain a separate license as an importer if the distributor acquires fuel for import only from an elective supplier or a permissive

supplier and is not required to obtain a separate license as an exporter. A person who is licensed as a distributor or a blender ~~is not required to obtain a separate license~~ and who transports fuel is considered to be licensed as a motor fuel ~~transporter if the distributor or blender does not transport motor fuel for others for hire.~~transporter."

SECTION 13.(b) G.S. 105-449.101 reads as rewritten:

"**§ 105-449.101. Motor fuel transporter to file informational return showing deliveries of ~~imported or exported~~ motor fuel.**

(a) Requirement. – A motor fuel transporter ~~that imports motor fuel into this State or exports motor fuel from this State~~ must file a monthly informational return with the Secretary that shows motor fuel ~~received or delivered for import or export~~ transported in this State by the transporter during the month. ~~This requirement does not apply to a distributor that is not required to be licensed as a motor fuel transporter.~~

(b) Content. – The return required by this section is due by the 25th day of the month following the month covered by the return. The return must contain the following information and any other information required by the Secretary:

(1) The name and address of each person from whom the transporter received motor fuel outside the State for delivery in the State, the amount of motor fuel received, the date the motor fuel was received, and the destination state of the fuel.

(2) The name and address of each person from whom the transporter received motor fuel in the State for delivery outside the State, the amount of motor fuel delivered, the date the motor fuel was delivered, and the destination state of the fuel.

(3) The name and address of each person from whom the transporter received motor fuel in the State for delivery in the State, the amount of motor fuel received, the date the motor fuel was received, and the destination state of the fuel."

SECTION 14.(a) G.S. 105-449.60 is amended by adding a new subdivision to read:

"**§ 105-449.60. Definitions.**

The following definitions apply in this Article:

...

(10a) Exempt card or code. – A credit card or an access code that enables the person to whom the card or code is issued to buy motor fuel at retail without paying the motor fuel excise tax on the fuel."

SECTION 14.(b) G.S. 105-449.88A reads as rewritten:

"**§ 105-449.88A. Liability for tax due on motor fuel designated as exempt by the use of cards or codes.**

~~(a) Exempt Cards at Rack. When a licensed distributor or licensed importer removes motor fuel from a terminal by means of an exempt card or exempt access code issued by the supplier, the distributor or importer represents that the fuel removed will be resold to a governmental unit that is exempt from the tax. A supplier may rely on this representation. A licensed distributor or licensed importer that does not resell motor fuel~~

~~removed from a terminal by means of an exempt card or exempt access code to an exempt governmental unit is liable for any tax due on the fuel.~~

(b) Exempt ~~Cards at Retail.~~ Card or Code. ~~An "exempt card or code" is a credit card or an access code that enables the person to whom the card or code is issued to buy motor fuel at retail without paying the motor fuel excise tax on the fuel.~~ An entity that issues an exempt card or code has a duty to determine if the person to whom it is issued is exempt from the motor fuel excise tax. An entity that issues an exempt card or code to a person who is not exempt from tax is liable for tax due on motor fuel the person purchases at retail by use of the exempt card or code. If a supplier authorizes another entity to issue an exempt card or code to a person who is not exempt from tax, the supplier and the entity that issued the card are jointly and severally liable for tax due on motor fuel the person purchases at retail by use of the exempt card or code.

(c) Card Holder. – A person to whom an exempt card or ~~exempt access card~~ code is issued ~~for use at a terminal or at retail~~ is liable for any tax due on fuel purchased with the card or code for a purpose that is not exempt. A person who misuses an exempt card or code by purchasing fuel with the card or code for a purpose that is not exempt is liable for the tax due on the fuel."

SECTION 14.(c) G..S. 105-449.90 reads as rewritten:

"§ 105-449.90. When tax return and payment are due.

(a) Filing Periods. – The excise tax imposed by this Article is payable when a return is due. A return is due ~~annually, quarterly,~~annually or monthly, as specified in this section. A return must be filed with the Secretary and be in the form required by the Secretary.

An annual return is due within 45 days after the end of each calendar year. An annual return covers tax liabilities that accrue in the calendar year preceding the date the return is due.

~~A quarterly return is due by the last day of the month that follows the end of a calendar quarter. A quarterly return covers tax liabilities that accrue in the calendar quarter preceding the date the return is due.~~

A monthly return of a person other than an occasional importer is due within 22 days after the end of each month. A monthly return of an occasional importer is due by the 3rd of each month. A monthly return covers tax liabilities that accrue in the calendar month preceding the date the return is due.

(b) Annual Filers. – A terminal operator must file an annual return for the compensating tax imposed by G.S. 105-449.85.

~~(c) Quarterly Filers. A licensed importer that removes fuel at a terminal rack of a permissive or an elective supplier and a licensed distributor must file a quarterly return under G.S. 105-449.94 to reconcile exempt sales.~~

(d) Monthly Filers on 22nd. – The following persons must file a monthly return by the 22nd of each month:

(1) A refiner.
(2) A supplier.
(3) A bonded importer.
(4) A blender.

(5) A tank wagon importer.
(6) A person that incurred a liability under G.S. 105-449.86 during the preceding month for the tax on dyed diesel fuel used to operate certain highway vehicles.
(7) A person that incurred a liability under G.S. 105-449.87 during the preceding month for the backup tax on motor fuel.

(e) Monthly Filers on 3rd. – An occasional importer must file a monthly return by the third day of each month. An occasional importer is not required to file a return, however, if all the motor fuel imported by the importer in a reporting period was removed at a terminal located in another state and the supplier of the fuel is an elective supplier or a permissive supplier. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 23; 1997-60, s. 11.)"

SECTION 14.(d) G.S. 105-449.93 reads as rewritten:

"**§ 105-449.93. ~~Exempt sale deduction and percentage~~ Percentage discount for licensed distributors and some licensed importers.**

~~(a) Deduction. – A license holder listed below may deduct from the amount of tax otherwise payable to a supplier the amount calculated on motor fuel the license holder received from the supplier and resold to a governmental unit whose purchases of motor fuel are exempt from the tax under G.S. 105-449.88 if, when removing the fuel, the license holder used an access card or code specified by the supplier to notify the supplier of the license holder's intent to resell the fuel in an exempt sale:~~

~~(1) A licensed distributor.~~
~~(2) A licensed importer that removed the motor fuel from a terminal rack of a permissive or an elective supplier.~~

(b) Percentage Discount. – A licensed distributor that pays the tax due a supplier by the date the supplier must pay the tax to the State may deduct from the amount due a discount of one percent (1%) of the amount of tax payable. A licensed importer that removes motor fuel from a terminal rack of a permissive or an elective supplier and that pays the tax due the supplier by the date the supplier must pay the tax to the State may deduct from the amount due a discount of the same amount allowed a licensed distributor. The discount covers the expense of furnishing a bond and losses due to shrinkage or evaporation. A supplier may not directly or indirectly deny this discount to a licensed distributor or licensed importer that pays the tax due the supplier by the date the supplier must pay the tax to the State."

SECTION 14.(e) G.S. 105-449.94 is repealed.

SECTION 14.(f) G.S. 105-449.97(d) reads as rewritten:

"(d) Taxes Paid on Exempt Retail Sales. – When filing a return, a supplier that issues or authorizes the issuance of an exempt card or ~~an exempt access~~ code to a person that enables the person to buy motor fuel ~~at retail~~ without paying tax on the fuel may deduct the amount of excise tax imposed on fuel purchased with the exempt ~~retail~~ card or code. The amount of excise tax imposed on fuel purchased ~~at retail~~ with an exempt ~~retail~~ card or code is the amount that was imposed on the fuel when it was delivered to the retailer of the fuel."

SECTION 14.(g) G.S. 105-449.105A(a) reads as rewritten:

"(a) Refund. – A distributor who sells kerosene to any of the following may obtain a refund for the excise tax the distributor paid on the kerosene, less the amount of any discount allowed on the kerosene under G.S. 105-449.93:

(1) The end user of the kerosene, if the distributor dispenses the kerosene into a storage facility of the end user that contains fuel used only for one of the following purposes and the storage facility is installed in a manner that makes use of the fuel for any other purpose improbable:
   a. Heating.
   b. Drying crops.
   c. A manufacturing process.

(2) A retailer of kerosene, if the distributor dispenses the kerosene into a storage facility that meets both of the following conditions:
   a. It is marked with the phrase "Undyed, Untaxed Kerosene, Nontaxable Use Only" or a similar phrase that clearly indicates that the fuel is not to be used to operate a highway vehicle.
   b. It either has a dispensing device that is not suitable for use in fueling a highway vehicle or is kept locked by the retailer and must be unlocked by the retailer for each sale of kerosene.

(3) An airport, if the distributor dispenses the kerosene into a storage facility that contains fuel used only for fueling airplanes and that meets at least one of the following conditions:
   a. It is marked with the phrase "Undyed, Untaxed Kerosene, Nontaxable Use Only" or a similar phrase that clearly indicates that the fuel is not to be used to operate a highway vehicle.
   b. It has a dispensing device that is not suitable for use in fueling a highway vehicle."

SECTION 15.(a) G.S. 105-449.100 reads as rewritten:

"**§ 105-449.100. Terminal operator to file informational return showing changes in amount of motor fuel at the terminal.**

A terminal operator must file a monthly informational return with the Secretary that shows the amount of motor fuel received or removed from the terminal during the month. The return is due ~~by the 25th day of the month following the month covered by the return.~~ on the same date as a monthly return due under G.S. 105-449.90. The return must contain the following information and any other information required by the Secretary:

(1) The number of gallons of motor fuel received in inventory at the terminal during the month and each position holder for the fuel.
(2) The number of gallons of motor fuel removed from inventory at the terminal during the month and, for each removal, the position holder for the fuel and the destination state of the fuel.
(3) The number of gallons of motor fuel gained or lost at the terminal during the month."

SECTION 15.(b) G.S. 105-449.101 reads as rewritten:

"**§ 105-449.101. Motor fuel transporter to file informational return showing deliveries of imported or exported motor fuel.**

(a) Requirement. – A motor fuel transporter that imports motor fuel into this State or exports motor fuel from this State must file a monthly informational return with the Secretary that shows motor fuel received or delivered for import or export by the transporter during the month. This requirement does not apply to a distributor that is not required to be licensed as a motor fuel transporter.

(b) Content. – The return required by this section ~~is due by the 25th day of the month following the month covered by the return. The return~~ must contain the following information and any other information required by the Secretary:

(1) The name and address of each person from whom the transporter received motor fuel outside the State for delivery in the State, the amount of motor fuel received, the date the motor fuel was received, and the destination state of the fuel.

(2) The name and address of each person from whom the transporter received motor fuel in the State for delivery outside the State, the amount of motor fuel delivered, the date the motor fuel was delivered, and the destination state of the fuel.

(c) Due Date. – The return required by this section is due on the same date as a monthly return due under G.S. 105-449.90"

SECTION 15.(c) G.S. 105-449.102(a) reads as rewritten:

"(a) Return. – A distributor that exports motor fuel from a bulk plant located in this State must file a monthly return with the Secretary that shows the exports. The return is due ~~by the 25th day of the month following the month covered by the return.~~ on the same date as a monthly return due under G.S. 105-449.90. The return serves as a claim for refund by the distributor for tax paid to this State on the exported motor fuel."

SECTION 15.(d) G.S. 105-449.137(b) reads as rewritten:

"(b) Payment. – The tax imposed by this Article is payable when a return is due. A return is due ~~monthly within 25 days after the end of each month.~~ on the same date as a monthly return due under G.S. 105-449.90. A monthly return covers liabilities that accrue in the calendar month preceding the date the return is due. A return must be filed with the Secretary and must be in the form and contain the information required by the Secretary."

SECTION 15.(e) G.S. 119-18(a) reads as rewritten:

"(a) Tax. – An inspection tax of one fourth of one cent (1/4 of 1¢) per gallon is levied upon all of the fuel listed in this subsection regardless of whether the fuel is exempt from the per-gallon excise tax imposed by Article 36C or 36D of Chapter 105 of the General Statutes. The inspection tax on motor fuel is due and payable to the Secretary of Revenue at the same time that the per gallon excise tax on motor fuel is due and payable under Article 36C of Chapter 105 of the General Statutes. The inspection tax on alternative fuel is due and payable to the Secretary of Revenue at the same time that the excise tax on alternative fuel is due and payable under Article 36D of Chapter 105 of the General Statutes. The inspection tax on kerosene is payable monthly to the Secretary by a supplier that is licensed under Part 2 of Article 36C of Chapter 105 of the

General Statutes and by a kerosene supplier. A monthly report is due ~~by the 22nd of each month~~ on the same date as a monthly return due under G.S. 105-449.90 and applies to kerosene sold during the preceding month by a supplier licensed under that Part and to kerosene received during the preceding month by a kerosene supplier. A kerosene terminal operator must file a return in accordance with the provisions of ~~G.S. 105-449.100.~~G.S. 105-449.90.

(1) Motor fuel.

(2) Alternative fuel used to operate a highway vehicle.

(3) Kerosene."

SECTION 16.(a) G.S. 105-449.106(c) reads as rewritten:

"(c) Special Mobile Equipment. – A person who purchases and uses motor fuel to operate special mobile equipment off-highway may receive a quarterly refund, for the excise tax paid during the preceding quarter, at a rate equal to the flat cents-per-gallon rate plus the variable cents-per-gallon rate in effect during the quarter for which the refund is claimed, less the amount of sales and use tax or privilege tax due on the fuel under this Chapter, as determined in accordance with G.S. 105-449.107(c). An application for a refund must be made in accordance with this Part."

SECTION 16.(b) G.S. 105-449.107 reads as rewritten:

"**§ 105-449.107. Annual refunds for off-highway use and use by certain vehicles with power attachments.**

(a) Off-Highway. – A person who purchases and uses motor fuel for a purpose other than to operate a licensed highway vehicle may receive an annual refund for the excise tax the person paid on fuel used during the preceding calendar year. The amount of refund allowed is the amount of the flat cents-per-gallon rate in effect during the year for which the refund is claimed plus the average of the two variable cents-per-gallon rates in effect during that year, less the amount of sales and use tax or privilege tax due on the fuel under this Chapter. An application for a refund allowed under this section must be made in accordance with this Part.

(b) Certain Vehicles. – A person who purchases and uses motor fuel in one of the vehicles listed below may receive an annual refund for the amount of fuel consumed by the vehicle:

(1) A concrete mixing vehicle.

(2) A solid waste compacting vehicle.

(3) A bulk feed vehicle that delivers feed to poultry or livestock and uses a power takeoff to unload the feed.

(4) A vehicle that delivers lime or fertilizer in bulk to farms and uses a power takeoff to unload the lime or fertilizer.

(5) A tank wagon that delivers alternative fuel, as defined in G.S. 105-449.130, or motor fuel or another type of liquid fuel into storage tanks and uses a power takeoff to make the delivery.

(6) A commercial vehicle that delivers and spreads mulch, soils, composts, sand, sawdust, and similar materials and that uses a power takeoff to unload, blow, and spread the materials.

(7) A commercial vehicle that uses a power takeoff to remove and dispose of septage and for which an annual fee is required to be paid to the Department of Environment and Natural Resources under G.S. 130A-291.1.

(8) A sweeper.

The amount of refund allowed is thirty-three and one-third percent (33 1/3%) of the following: the sum of the flat cents-per-gallon rate in effect during the year for which the refund is claimed and the average of the two variable cents-per-gallon rates in effect during that year, less the amount of sales and use tax or privilege tax due on the fuel under this Chapter. An application for a refund allowed under this section must be made in accordance with this Part. This refund is allowed for the amount of fuel consumed by the vehicle in its mixing, compacting, or unloading operations, as distinguished from propelling the vehicle, which amount is considered to be one-third of the amount of fuel consumed by the vehicle.

(c) Sales Tax Amount. – Article 5 of this Chapter determines the amount of sales and use tax to be deducted under this section from a motor fuel excise tax refund. Article 5F of this Chapter determines the amount of privilege tax to be deducted under this section from a motor fuel excise tax refund. The sales price and the cost price of motor fuel to be used in determining the amount to deduct is the average of the wholesale prices used under G.S. 105-449.80 to determine the excise tax rates in effect for the two six-month periods of the year for which the refund is claimed."

SECTION 17. G.S. 105-449.120(a)(3a) is repealed.

SECTION 18. The catch line of G.S. 105-249.2 reads as rewritten:

"**§ 105-249.2. Due date extended and penalties waived for certain military personnel or ~~individuals~~ persons affected by a presidentially declared disaster.**"

SECTION 19. The catch line of G.S. 143B-437.71 reads as rewritten:

"**§ 143B-437.71. One North Carolina Fund established as a ~~nonreverting account.~~special revenue fund.**"

SECTION 20.(a) G.S. 153A-155(d) reads as rewritten:

"(d) Administration. – The taxing county shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the county finance officer in monthly installments on or before the ~~15th~~20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 20th day of each month, prepare and render a return on a form prescribed by the taxing county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the county finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1."

SECTION 20.(b) G.S. 160A-215(d) reads as rewritten:

"(d) Administration. – The taxing city shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the city finance officer in monthly installments on or before the ~~15th~~20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or

before the 20th day of each month, prepare and render a return on a form prescribed by the taxing city. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the city finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1."

SECTION 21. G.S. 160A-49(f2) reads as rewritten:

"(f2) Effective Date of Annexation for Certain Property. – Annexation of property subject to annexation under subsection (f1) of this section shall become effective:

(1) Upon the effective date of the annexation ordinance, the property is considered part of the city only (i) for the purpose of establishing city boundaries for additional annexations pursuant to this Article and (ii) for the exercise of city authority pursuant to Article 19 of this Chapter.

(2) For all other purposes, the annexation becomes effective as to each tract of such property or part thereof on the last day of the month in which that tract or part thereof becomes ineligible for classification pursuant to ~~G.S. 105-227.4~~ G.S. 105-277.4 or no longer meets the requirements of subdivision (f1)(2) of this section. Until annexation of a tract or a part of a tract becomes effective pursuant to this subdivision, the tract or part of a tract is not subject to taxation by the city under Article 12 of Chapter 105 of the General Statutes nor is the tract or part of a tract entitled to services provided by the city."

SECTION 22. The introductory language for Section 59.2 of S.L. 2005-435 reads as rewritten:

"**SECTION 59.2.(a)** ~~G.S. 105-114.1(a4)~~ G.S. 105-114(a4) reads as rewritten:".

SECTION 23. The introductory language of Section 4 of S.L. 2005-413 reads as rewritten:

"**SECTION 4.** ~~G.S. 105-129.15(7) reads~~ Subdivisions (6) and (7) of G.S. 105-129.15 read as rewritten:".

SECTION 24. Section 1(a) of S.L. 2005-261 reads as rewritten:

"**SECTION 1.(a)** Authority; Vote. – If the majority of those voting on the question pursuant to this section vote for the levy of the tax, the Monroe City Council may, by ordinance, levy a prepared food and beverages tax of up to one percent (1%) of the sales price of prepared food and beverages sold within the City of Monroe at retail for consumption on or off the premises by a retailer subject to sales tax under G.S. ~~105-164(a)(1).~~105-164.4(a)(1). This tax is in addition to State and local sales tax.

The Monroe City Council may direct the county board of elections to submit to the qualified voters of the city during any election held in 2006 the question of whether to levy a local prepared food and beverages tax of one percent (1%) as provided in this section. The election must be held on a date jointly agreed upon by the board of elections and city council and held in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

One percent (1%) local prepared food and beverages tax, in addition to the current local sales and use taxes, to be used for the Civic Center Project for the City of Monroe."

SECTION 25. Section 4 is effective for taxable years beginning on or after January 1, 2006. Section 13 of this act becomes effective July 1, 2007, and applies to motor fuel transported on or after that date. Sections 14, 15, and 17 of this act become effective January 1, 2007, and apply to motor fuel purchased on or after that date. An exempt card or code will not be valid for sales of motor fuel at the terminal rack on or after January 1, 2007. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 1963*

Short Title:	Revenue Laws Tech. & Motor Fuel Tax Changes.	(Public)
Sponsors:	Representatives Luebke; Carney, Church, Hill, McComas, Wainwright, and Wilkins.	
Referred to:	Finance.	

May 15, 2006

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES TO THE REVENUE LAWS AND RELATED STATUTES AND TO IMPROVE THE COLLECTION AND ADMINISTRATION OF THE MOTOR FUEL TAX.

The General Assembly of North Carolina enacts:

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

"**§ 105-113.82. Distribution of part of beer and wine taxes.**

(a) Amount, Method. – The Secretary shall distribute annually the following percentages of the net amount of excise taxes collected on the sale of malt beverages and wine during the preceding 12-month period ending March 31, less the amount of the net proceeds credited to the Department of ~~Agriculture and Consumer Services~~ Commerce under G.S. 105-113.81A, to the counties and cities in which the retail sale of these beverages is authorized in the entire county or city:

(1) Of the tax on malt beverages levied under G.S. 105-113.80(a), twenty-three and three-fourths percent (23¾%);

(2) Of the tax on unfortified wine levied under G.S. 105-113.80(b), sixty-two percent (62%); and

(3) Of the tax on fortified wine levied under G.S. 105-113.80(b), twenty-two percent (22%).

If malt beverages, unfortified wine, or fortified wine may be licensed to be sold at retail in both a county and a city located in the county, both the county and city shall receive a portion of the amount distributed, that portion to be determined on the basis of population. If one of these beverages may be licensed to be sold at retail in a city located in a county in which the sale of the beverage is otherwise prohibited, only the city shall receive a portion of the amount distributed, that portion to be determined on the basis of population. The amounts distributed under subdivisions (1), (2), and (3) shall be computed separately."

SECTION 2. G.S. 105-122(d) reads as rewritten:

"(d) After determining the proportion of its total capital stock, surplus and undivided profits as set out in subsection (c) of this section, which amount ~~so determined~~ shall ~~in no case~~ not be less than fifty-five percent (55%) of the appraised value as determined for ad valorem taxation of all the real and tangible personal property in this State of each ~~such~~ corporation ~~plus the total appraised value of intangible property returned for taxation of intangible personal property as herein specified~~ nor less than its total actual investment in tangible property in this State, every corporation taxed under this section shall annually pay to the Secretary of Revenue, at the time the report and statement are due, a franchise or privilege ~~tax, which is hereby levied~~ tax at the rate of one dollar and fifty cents ($1.50) per one thousand dollars ($1,000) of the total amount of capital stock, surplus and undivided profits as ~~herein provided.~~ provided in this section. The tax imposed in this section shall ~~in no case~~ not be less than thirty-five dollars ($35.00) and shall be for the privilege of carrying on, doing business, and/or the continuance of articles of incorporation or domestication of each ~~such~~ corporation in this State. Appraised value of tangible property including real estate ~~shall be~~ is the ad valorem valuation for the calendar year next preceding the due date of the franchise tax return. ~~Appraised value of intangible property shall be the total gross valuation required to be reported for intangible tax purposes on April 15 coincident with or next preceding the due date of the franchise tax return.~~ The term "total actual investment in tangible property" as used in this section ~~shall be construed to mean~~ means the total original purchase price or consideration to the reporting taxpayer of its tangible properties, including real estate, in this State plus additions and improvements thereto less reserve for depreciation as permitted for income tax purposes, and also less any indebtedness incurred and existing by virtue of the purchase of any real estate and any permanent improvements made thereon. In computing "total actual investment in tangible personal property" there shall also be deducted reserves for the entire cost of any air-cleaning device or sewage or waste treatment plant, including waste lagoons, and pollution abatement equipment purchased or constructed and installed which reduces the amount of air or water pollution resulting from the emission of air contaminants or the discharge of sewage and industrial wastes or other polluting materials or substances into the outdoor atmosphere or into streams, lakes, or rivers, upon condition that the corporation claiming ~~such~~ this deduction shall furnish to the Secretary a certificate from the Department of Environment and Natural Resources or from a local air pollution control program for air-cleaning devices located in an area where the Environmental Management Commission has certified a local air pollution control program pursuant to G.S. 143-215.112 certifying that said Department or local air pollution control program has found as a fact that the air-cleaning device, waste treatment plant or pollution abatement equipment purchased or constructed and installed as above described has actually been constructed and installed and that ~~such~~ the device, plant or equipment complies with the requirements of the Environmental Management Commission or local air pollution control program with respect to ~~such~~ the devices, plants or equipment, that ~~such~~ the device, plant or equipment is being effectively operated in accordance with the terms and conditions set forth in the permit, certificate

of approval, or other document of approval issued by the Environmental Management Commission or local air pollution control program and that the primary purpose ~~thereof~~ is to reduce air or water pollution resulting from the emission of air contaminants or the discharge of sewage and waste and not merely incidental to other purposes and functions. The cost of constructing facilities of any private or public utility built for the purpose of providing sewer service to residential and outlying areas ~~shall be~~ is treated as deductible for the purposes of this section; the deductible liability allowed by this section shall apply only with respect to ~~such~~ pollution abatement plants or equipment constructed or installed on or after January 1, 1955."

SECTION 3.(a) G.S. 105-130.2 reads as rewritten:

"...

(4a) Gross income. – Defined in section 61 of the Code.

~~(4a)~~(4b) Income year. – The calendar year or the fiscal year upon the basis of which the net income is computed under this Part. If no fiscal year has been established, the income year is the calendar year. In the case of a return made for a fractional part of a year under the provisions of this Part or under rules adopted by the Secretary, the income year is the period for which the return is made.

..."

SECTION 3.(b) G.S. 105-114(b)(4) reads as rewritten:

"(4) Income year. – Defined in G.S. ~~105-130.2(5).~~105-130.2(4b)."

SECTION 4.(a) G.S. 105-130.47(a) reads as rewritten:

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

(1) Highly compensated individual. – An individual who receives compensation in excess of one million dollars ($1,000,000) for services with respect to a single production.

(2) Live sporting event. – A scheduled sporting competition, game, or race that is not originated by a production company, but originated solely by an amateur, collegiate, or professional organization, institution, or association for live or tape-delayed television or satellite broadcast. A live sporting event shall not include commercial advertising, an episodic television series, a television pilot, music video, motion picture, or documentary production where any sporting events are presented through archived historical footage or similar footage depicting earlier live sporting events that originated more than thirty days before the time of such usage.

(3) Production company. – Defined in G.S. 105-164.3.

(4) Qualifying expenses. – The sum of the total amount spent in this State for the following by a production company in connection with a production:

a. Goods and services leased or purchased by the production company. For goods with a purchase price of twenty-five thousand dollars ($25,000) or more, the amount included in

qualifying expenses is the purchase price less the fair market value of the good at the time the production is completed.

b. Compensation and wages paid by the production company, other than amounts paid to a highly compensated individual, either directly or indirectly, on which ~~the production company remitted~~ withholding payments are remitted to the Department of Revenue under Article 4A of this Chapter."

SECTION 4.(b) G.S. 105-151.29(a) reads as rewritten:

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

(1) Highly compensated individual. – An individual who receives compensation in excess of one million dollars ($1,000,000) for services with respect to a single production.

(2) Live sporting event. – A scheduled sporting competition, game, or race that is not originated by a production company, but originated solely by an amateur, collegiate, or professional organization, institution, or association for live or tape-delayed television or satellite broadcast. A live sporting event shall not include commercial advertising, an episodic television series, a television pilot, music video, motion picture, or documentary production where any sporting events are presented through archived historical footage or similar footage depicting earlier live sporting events that originated more than thirty days before the time of such usage.

(3) Production company. – Defined in G.S. 105-164.3.

(4) Qualifying expenses. – The sum of the total amount spent in this State for the following by a production company in connection with a production:

a. Goods and services leased or purchased by the production company. For goods with a purchase price of twenty-five thousand dollars ($25,000) or more, the amount included in qualifying expenses is the purchase price less the fair market value of the good at the time the production is completed.

b. Compensation and wages paid by the production company, other than amounts paid to a highly compensated individual, either directly or indirectly, on which ~~the production company remitted~~ withholding payments are remitted to the Department of Revenue under Article 4A of this Chapter."

SECTION 4.(c) G.S. 105-259(b) reads as rewritten:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

~~(32) To provide the report required under G.S. 105-164.14(c) to the Department of Public Instruction and the Fiscal Research Division of the General Assembly.~~

(a) It shall be a violation of G.S. 75-1.1 for any person to sell or rent or offer to sell or rent at retail during a state of disaster, in the area for which the state of disaster has been declared, any merchandise or services which are consumed or used as a direct result of an emergency or which are consumed or used to preserve, protect, or sustain life, health, safety, or comfort of persons or their property with the knowledge and intent to charge a price that is unreasonably excessive under the circumstances. In determining whether a price is unreasonably excessive, it shall be considered whether:

(1) The price charged by the seller is attributable to additional costs imposed by the seller's supplier or other costs of providing the good or service during the state of disaster; and

(2) The seller offered to sell or rent the merchandise or service at a price that was below the seller's average price in the preceding 60 days before the state of ~~disaster.~~disaster; and

(3) The seller was pricing above market prices when no alternative seller was available.

If the seller did not sell or rent or offer to sell or rent the merchandise or service in question prior to the time the state of disaster was declared, the price at which the merchandise or service was generally available in the trade area shall be used as a factor in determining if the seller is charging an unreasonably excessive price.

(b) In the event the Attorney General investigates a complaint for a violation of this section and determines that the seller has not violated the provisions of this section and if the seller so requests, the Attorney General shall promptly issue a signed statement indicating that the Attorney General has not found a violation of this section. The Attorney General shall maintain the confidentiality of all evidence, testimony, documents, statements, or other results of an investigation under this section, including the names of the complainant and the individual, corporation, or other entity that is the subject of the investigation. Nothing herein shall be construed to prevent the presentation or disclosure of any information or evidence in an action or proceeding brought under this section or pursuant to an order from a court of competent jurisdiction.

(c) For the purposes of this section, the end of a state of disaster is the earlier of 45 days or the termination of a natural or man-made disaster or emergency as declared in accordance with G.S. 166A-6 or G.S. 166A-8.

(d) The Office of the Governor shall maintain a mailing list of individuals who have requested, in writing, notice of the issuance of a declaration of a state of disaster or emergency. When the Office of the Governor declares a state of disaster or emergency, it must provide, by electronic or U.S. mail, a copy of the declaration to each individual on the list."

SECTION 3. G.S. 166A-4(1) reads as rewritten:

"(1) Disaster. – An occurrence or imminent threat of widespread or severe damage, injury, economic well-being, or loss of life or property resulting from any natural or man-made incidental, accidental, military or paramilitary cause."

SECTION 4. There is appropriated from the General Fund to the Highway Fund and Highway Trust Fund an appropriate amount of funds to offset the loss of revenue from capping the motor fuels excise tax.

SECTION 5. This act becomes effective July 1, 2006.

BILL ANALYSIS

GAS TAX BILLS:
HB 1802: Reduce Motor Fuels Tax
HB 1842:Ensure Integrity of Highway Trust Fund
HB 1853: Cap Variable Rate of Gas Excise Tax
HB 2172: Reduce and Cap Gas Tax
HB 2384: Cap Variable Rate of the Gas Excise Tax

Committee: House Finance
Introduced by:
Version: First Edition
Date: May 31, 2006
Summary by: Martha Walston
Committee Counsel

SUMMARY: The following five bills are currently in House Finance, and each one caps the gas tax.

Bill #	Sponsors	Wholesale component rate cap	Other Changes	Effective Date
HB 1802	Allred, Pate, Brown, Hilton	7.1¢ per gallon		January. 1, 2006
HB 1842	Moore, Clary, LaRoque, Daughtridge	9.1¢ per gallon	Repeals requirement that Treasurer transfer funds from Highway Trust Fund to General Fund. Requires repayment of funds transferred from Highway Trust Fund to General Fund since 1989 and requires these funds be appropriated for purposes under G.S. 136-176	July 1, 2006
HB 1853	Kiser, Justus, Howard	9.6¢ per gallon		July 1, 2006
HB 2172	Harrell, Goforth	9.6¢ per gallon		July 1, 2006
HB 2384	Gibson, Coates, Underhill, Goforth	12.4¢ per gallon	Adds language to statute governing prohibiting excessive pricing during states of disaster, that when determining whether a price is excessive, one must consider whether "the seller was pricing above market prices when no alternative seller was available". Requires the AG to maintain the confidentiality of evidence from an excessive pricing investigation,	

			except by court order Directs Office of Governor to maintain list of people who have requested written notice of declaration of state of disaster, and to send them notice by mail or electronically. Amends definition of "disaster" under the NC Emergency Management Act of 1977 to include an occurrence of imminent threat to economic well-being resulting from a natural or man-made incidental cause. Appropriates from General Fund to Highway Fund and Highway Trust Fund an appropriate amount of funds to offset the loss of revenue from capping the motor fuels excise tax	

CURRENT LAW: The motor fuel excise tax is imposed on all motor fuel sold, distributed, or used in the State. The rate of tax consists of a flat rate of 17.5¢ per gallon plus a variable wholesale component equal to the greater of 7% of the average wholesale price of motor fuel during the preceding six-month base period or 3.5¢ per gallon. The current total rate is 29.9¢ per gallon for the period January 1, 2006, through June 30, 2006.

Prior rates:

January 1, 2000-June 30, 2000.....22.0¢ per gallon
July 1, 2000-December 31, 2000.....23.1¢ per gallon
January 1, 2001-June 30, 2001.....24.3¢ per gallon
July 1, 2001-December 31, 2001.....24.1¢ per gallon
January 1, 2002-June 30, 2002.....24.2¢ per gallon
July 1, 2002-December 31, 2002.....22.1¢ per gallon
January 1, 2003-June 30, 2003.....23.4¢ per gallon
July 1, 2003-December 31, 2003.....24.2¢ per gallon
January 1, 2004-June 30, 2004.....24.3¢ per gallon
July 1, 2004-December 31, 2004.....24.6¢ per gallon
January 1, 2005-June 30, 2005.....26.6¢ per gallon
July 1, 2005-December 31, 2005.....27.1¢ per gallon.

Fiscal Impact of Ho[illegible]Motor Fuels Tax Bills
2006

	Budget Office Variable Rate Forecast (1) (cents/gallon)	**Senate Budget (2)**	**HB1842** Moore, Clary, LaRoque, Daughtridge	**HB1853** Kiser, Justus, Howard **HB2172** Harrell, Goforth	**HB2384** Gibson, Coates, Underhill, Goforth	**H1802** Allred, Pate, Brown, Hilton
Variable Rate Cap (cents/gallon)		12.4 (one year)	9.1	9.6	12.4	7.1
		Total Fiscal Impact – Highway Fund and Highway Trust Fund (3)(4) (million $)				
FY06-07	12.8	(23.3)	(200)	(173)	(23.3)	(308)
FY07-08	12.3		(173)	(146)		(281)
FY08-09	12.1		(162)	(135)		(270)
FY09-10	11.7		(140)	(113)		(248)
FY10-11	11.1		(108)	(81)		(216)

Notes:

(1) Variable Rate forecasts shown are very uncertain.

(2) Senate Budget creates a General Fund reserve of $23.3 million to hold Highway Fund and Highway Trust Fund harmless if necessary.

(3) Assumes that one cent of motor fuels tax brings in approximately $54 million.

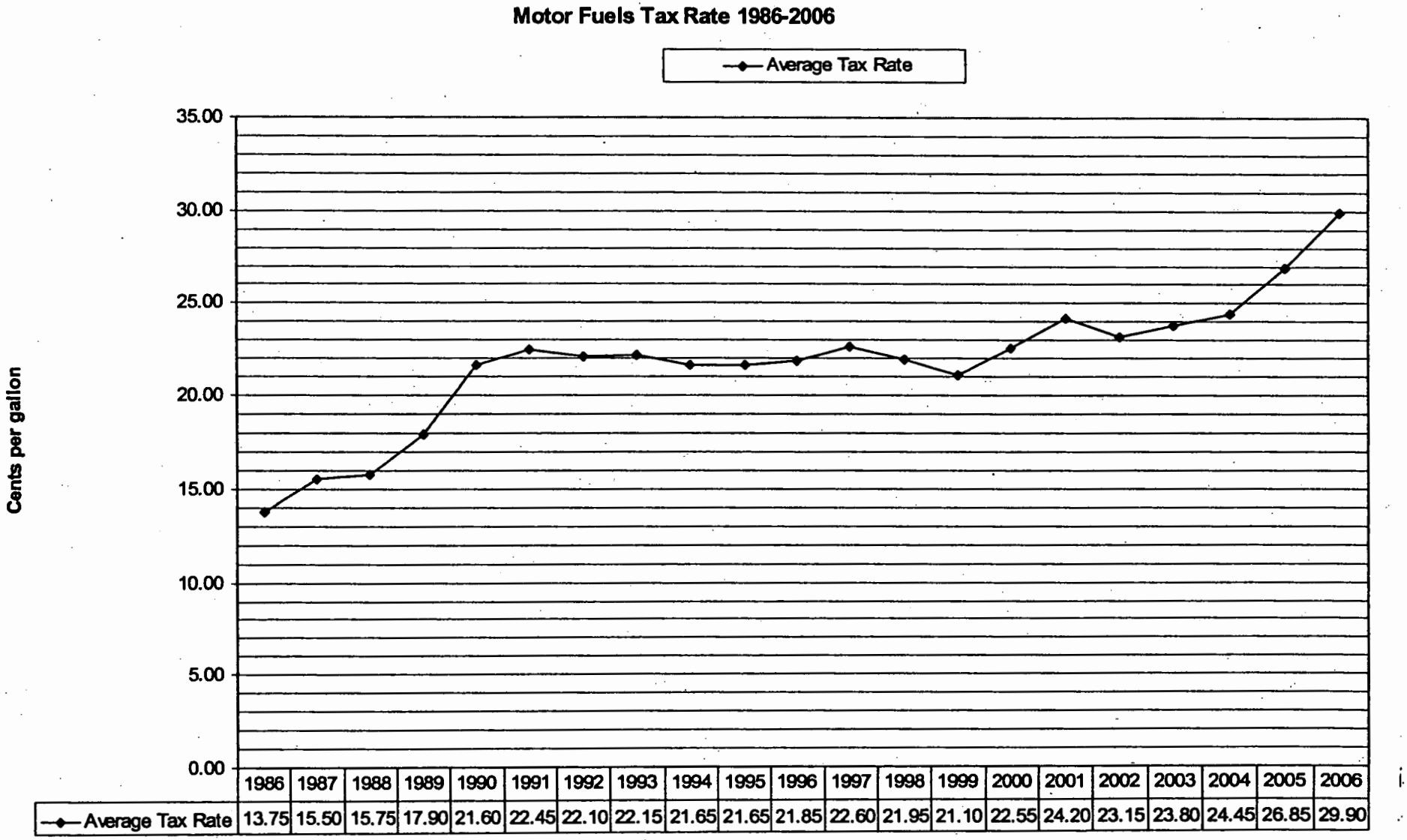
(4) Motor Fuels tax is distributed to the Highway Fund (3/4) and the Highway Trust Fund (1/4).

Fiscal Research Division
May 31, 2006

North Carolina Motor Fuels Tax

- Current rate is 29.9 cents per gallon. Next change is July 1. The rate will either stay the same or decrease slightly (perhaps to 29.8 or 29.7).
- Same rate applies to gasoline, diesel fuel, and alternative fuels
- **Flat rate** of 17.5 cents per gallon, plus
- **Variable rate** of 7% of the weighted average wholesale price of gasoline and diesel for a six month base period ending March 31 or September 30. The floor for the variable rate is 3.5 cents per gallon. (G.S. 105-449.80)
- Exemptions for federal government, state government, local government, LEA's, charter schools, community colleges. (G.S. 105-449.88)
- Other exemptions (less 1 cent per gallon) for certain non-profits, etc. (G.S. 105-449.106). Exemptions for non highway use (e.g. farming, boating) (G.S. 105-449.10)
- An inspection tax of .25 cents per gallon (total of about $15 million) is paid on all fuel, including purchases by exempt users. Funds Dept. of Agriculture for pump inspection, Dept. of Revenue for tax administration, and Leaking Underground Storage Tank Program. (G.S. 119-18)
- *Federal excise tax on motor fuels is 18.4 cents per gallon on gasoline and 24.4 cents per gallon on diesel.*

North Carolina Motor Fuels Tax



	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Average Tax Rate	13.75	15.50	15.75	17.90	21.60	22.45	22.10	22.15	21.65	21.65	21.85	22.60	21.95	21.10	22.55	24.20	23.15	23.80	24.45	26.85	29.90

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 2047*
PROPOSED COMMITTEE SUBSTITUTE H2047-CSRBx-48 [v.6]

6/1/2006 7:21:15 AM

Short Title: Video Service Competition Act. (Public)

Sponsors:

Referred to:

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO PROMOTE CONSUMER CHOICE IN VIDEO SERVICE PROVIDERS AND TO ESTABLISH UNIFORM TAXES FOR VIDEO PROGRAMMING SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 66 of the General Statutes is amended by adding a new Article to read:

"Article 42.

"State Franchise for Cable Television Service.

"**§ 66-350. Definitions.**

The following definitions apply in this Article:

(1) Cable service. – Defined in G.S. 105-164.3.

(2) Cable system. – Defined in 47 U.S.C. § 522.

(3) Channel. – A portion of the electromagnetic frequency spectrum that is used in a cable system and is capable of delivering a television channel.

(4) Existing agreement. – A local franchise agreement that was awarded under G.S. 153A-137 or G.S. 160A-319 and meets either of the following:

a. Is in effect on January 1, 2007.

b. Expired before January 1, 2007, and the cable service provider under the agreement provides cable service to subscribers in the franchise area on January 1, 2007.

(5) Pass a household. – Make service available to a household, regardless of whether the household subscribes to the service.

(6) PEG channel. – A public, educational, or governmental access channel provided to a county or city.

(7) Secretary. – The Secretary of State.

"**§ 66-351. State franchising authority.**

(a) Authority. – The Secretary of State is designated the exclusive franchising authority in this State for cable service provided over a cable system. This designation replaces the authorization to counties and cities in former G.S. 153A-137 and G.S. 160A-319 to award a franchise for cable service. This designation is effective January 1, 2007. After this date, a county or city may not award or renew a franchise for cable service.

(b) Award and Scope. – The Secretary is considered to have awarded a franchise to a person who files a notice of franchise under G.S. 66-352. A franchise for cable service authorizes the holder of the franchise to construct and operate a cable system over public rights-of-way within the area to be served. Chapter 160A of the General Statutes governs the regulation of public rights-of-way by a city.

"**§ 66-352. Award of franchise and commencement of service.**

(a) Notice of Franchise. – A person who intends to provide cable service over a cable system in an area must file a notice of franchise with the Secretary before providing the service. A person who files a notice of franchise must pay a fee in the amount set in G.S. 55-1-22 for filing articles of incorporation.

A notice of franchise is effective when it is filed with the Secretary. The notice of franchise must include all of the following:

(1) The applicant's name and principal place of business.

(2) A description and map of the area to be served.

(3) A list of each county and city in which the described service area is located, in whole or in part.

(4) A schedule indicating when service is expected to be offered in the service area.

(b) Commencement of Service. – A person who files a notice of franchise under subsection (a) of this section must begin providing cable service in the service area described in the notice within 120 days after the notice is filed. If cable service does not begin within this period, the notice of franchise terminates 130 days after it was filed. If cable service begins within this period, the holder of the State-issued franchise must file a notice of service with the Secretary within 10 days after the cable service begins. Cable service begins when it passes one or more households in the described service area. This subsection does not apply to a cable service provider who terminates an existing agreement whose franchise area includes all of the service area described in a notice of franchise filed by the provider under subsection (a) of this section.

A notice of service for a service area must include all of the following:

(1) The effective date of a notice of franchise for that area.

(2) A description and map of the service area.

(3) A statement that cable service has begun in the service area.

(c) Extension. – A person who intends to provide cable service over a cable system in an area that is contiguous with but outside the service area described in a notice of franchise on file with the Secretary must file a notice of franchise under subsection (a) of this section that includes the proposed area. The initial service requirements in subsection (b) of this section apply to the proposed area. If the map of

the area to be served includes any area that is part of the service area of another State-issued franchise, the termination of a notice of franchise for the proposed area for failure to begin service within the required time does not affect the status of the other State-issued franchise.

(d) Withdrawal. – A person may withdraw a notice of franchise by filing a notice of withdrawal with the Secretary. The notice of withdrawal must be filed at least 90 days before the service is withdrawn.

"**§ 66-353. Annual service report.**

A holder of a State-issued franchise must file an annual service report with the Secretary. The report must be filed on or before July 31 of each year. The report must be accompanied by a fee in the amount set in G.S. 55-1-22 for filing a corporate annual report. The report must include all of the following:

(1) The effective date of a notice of franchise for that area.
(2) A description and map of the service area.
(3) The approximate number of households in the service area.
(4) A description and a map of the households passed in the service area as of July 1.
(5) The percentage of households passed in the service area as of July 1.
(6) The percentage of households passed in the service area as of July 1 of any preceding year for which a report was required under this section.
(7) A report indicating the extent to which the holder has met the customer service requirements under G.S. 66-356(b).
(8) A schedule indicating when service is expected to be offered in the service area, to the extent the schedule differs from one included in the notice of franchise or in a report previously submitted under this section, and an explanation of the reason for the new schedule.

"**§ 66-354. General filing and report requirements.**

(a) General. – A document filed with the Secretary under this Article must be signed by an officer or general partner of the person submitting the document. Within five days after a person files a document with the Secretary under this Article, the person must send a copy of the document to any county or city included in the service area described in the document. A document filed under this Article is a public record as defined in G.S. 132-1.

A successor in interest to a person who has filed a notice of franchise is not required to file another notice of franchise. When a change in ownership occurs, the owner must file a notice of change in ownership with the Secretary within 14 days after the change becomes effective.

(b) Penalty. – A person who fails to file a notice of franchise, a notice of service, or an annual service report as required under this Article is subject to a civil penalty of two hundred fifty dollars ($250.00) a day until the document is filed. The penalty is payable to the Secretary. The clear proceeds of the penalties collected under this subsection must be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

"**§ 66-355. Effect on existing local franchise agreement.**

(a) Existing Agreement. – This Article does not affect an existing agreement except as follows:

(1) Effective January 1, 2007, gross revenue used to calculate the payment of the franchise tax imposed by G.S. 153A-154 or G.S. 160A-214 does not include gross receipts from cable service subject to sales tax under G.S. 105-164.4. This exclusion does not otherwise affect the calculation of gross revenue and the payment to counties and cities of franchise tax revenue under existing agreements that have not been terminated under subsection (b) of this section.

(2) A cable service provider under an existing agreement may terminate the agreement in accordance with subsection (b) of this section when a notice of service filed under G.S. 66-352 indicates that one or more households in the franchise area of the existing agreement are passed by both the cable service provider under the existing agreement and the holder of a State-issued franchise.

(b) Termination. – To terminate an existing agreement, a cable service provider must file a notice of termination with the affected county or city and file a notice of franchise with the Secretary. A termination of an existing agreement becomes effective at the end of the month in which the notice of termination is filed with the affected county or city. A termination of an existing agreement ends the obligations under the agreement and under any local cable regulatory ordinance that specifically authorizes the agreement as of the effective date of the termination but does not affect the rights or liabilities of the county or city, a taxpayer, or another person arising under the existing agreement or local ordinance before the effective date of the termination.

"**§ 66-356. Service standards and requirements.**

(a) Discrimination Prohibited. – A person who provides cable service over a cable system may not deny access to the service to any group of potential residential subscribers within the filed service area because of the race or income of the residents. A violation of this subsection is considered an unfair or deceptive act or practice under G.S. 75-1.1.

In determining whether a cable service provider has violated this subsection with respect to a group of potential residential subscribers in a service area, the following factors must be considered:

(1) The length of time since the provider filed the notice of service for the area. If less than a year has elapsed since the notice of service was filed, it is conclusively presumed that a violation has not occurred.

(2) The cost of providing service to the affected group due to distance from facilities, density, or other factors.

(3) Technological impediments to providing service to the affected group.

(4) Inability to obtain access to property required to provide service to the affected group.

(5) Competitive pressure to respond to service offered by another cable service provider.

(b) FCC Standards. – A person who provides cable service over a cable system must comply with the customer service requirements in 47 C.F.R. Part 76 and emergency alert requirements established by the Federal Communications Commission.

(c) Complaints. – The Consumer Protection Division of the Attorney General's office is designated as the State agency to receive and respond to customer complaints concerning cable service. A cable service provider who fails to address a customer complaint raised by the Consumer Protection Division in a reasonable time and manner is subject to a civil penalty of one hundred dollars ($100.00) a day until the complaint is addressed. A penalty may not be imposed under this subsection unless the Division has notified the provider of its intent to do so and has given the provider sufficient time to address the complaint. The penalty is payable to the Office of the Attorney General. The clear proceeds of the penalties collected under this subsection must be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

To facilitate the resolution of customer complaints, the cable service provider must include the following information on the customer's bill:

(1) The telephone number for the cable service provider.

(2) The following statement: "If the cable service provider does not satisfactorily resolve your complaint, contact the Consumer Protection Division of the Attorney General's Office of the State of North Carolina."

(3) The telephone number of the Consumer Protection Division of the Attorney General's Office.

(d) No Build-Out. – No build-out requirements apply to a person who provides cable service under a State-issued franchise.

"**§ 66-357. Availability and use of PEG channels.**

(a) Application. – This section applies to a person who provides cable service under a State-issued franchise. It does not apply to a person who provides cable service under an existing agreement.

(b) Local Request. – A county or city must make a written request to a cable service provider for PEG channel capacity. The request must include a statement describing the county's or city's plan to operate and program each channel requested. The cable service provider must provide the requested PEG channel capacity within 120 days after it receives the written request.

(c) Initial PEG Channels. – A city with a population of at least 50,000 is allowed a minimum of three initial PEG channels plus any channels in excess of this minimum that are activated, as of January 1, 2007, under the terms of an existing franchise agreement whose franchise area includes the city. A city with a population of less than 50,000 is allowed a minimum of two initial PEG channels plus any channels in excess of this minimum that are activated, as of January 1, 2007, under the terms of an existing franchise agreement whose franchise area includes the city. For a city included in the franchise area of an existing agreement, the agreement determines the service tier placement and transmission quality of the initial PEG channels. For a city that is not included in the franchise area of an existing agreement, the initial PEG channels must

be on a basic service tier and the transmission quality of the channels must be equivalent to those of the closest city covered by an existing agreement.

A county is allowed a minimum of two initial PEG channels plus any channels in excess of this minimum that are activated, as of January 1, 2007, under the terms of an existing franchise agreement whose franchise area includes the county. For a county included in the franchise area of an existing agreement, the agreement determines the service tier placement and transmission quality of the initial PEG channels. For a county that is not included in the franchise area of an existing agreement, the initial PEG channels must be on a basic service tier and the transmission quality of the channels must be equivalent to those of any city with PEG channels in the county.

The cable service provider must maintain the same channel designation for a PEG channel unless the service area of the State-issued franchise includes PEG channels that are operated by different counties or cities and those PEG channels have the same channel designation.

(d) Additional PEG Channels. – A county or city that does not have seven PEG channels, including the initial PEG channels, is eligible for an additional PEG channel if it meets the programming requirements in this subsection. A county or city that has seven PEG channels is not eligible for an additional channel.

A county or city that meets the programming requirements in this subsection may make a written request under subsection (b) of this section for an additional channel. The additional channel may be provided on any service tier. The transmission quality of the additional channel must be at least equivalent to the transmission quality of the other channels provided.

The PEG channels operated by a county or city must meet the following programming requirements for at least 120 continuous days in order for the county or city to obtain an additional channel:

(1) All of the PEG channels must have scheduled programming for at least eighty percent (80%) of the time for at least eight hours a day.

(2) The programming content of each of the PEG channels must not repeat more than fifteen percent (15%) of the programming content on any of the other PEG channels.

(3) No more than fifteen percent (15%) of the programming content on any of the PEG channels may be character-generated programming.

(e) Use of Channels. – If a county or city no longer provides any programming for transmission over a PEG channel it has activated, the channel may be reprogrammed at the cable service provider's discretion. A cable service provider must give at least 60 days notice to a county or city before it reprograms a PEG channel that is not used. The cable service provider must restore a previously lost PEG channel within 120 days of the date a county or city certifies to the provider a schedule that demonstrates the channel will be used.

(f) Operation of Channels. – A cable service provider is responsible only for the transmission of a PEG channel. The county or city to which the PEG channel is provided is responsible for the operation and content of the channel. A county or city that provides content to a cable service provider for transmission on a PEG channel is

considered to have authorized the provider to transmit the content throughout the provider's service area, regardless of whether part of the service area is outside the boundaries of the county or city.

All programming on a PEG channel must be noncommercial. A cable service provider may not brand content on a PEG channel with its logo, name, or other identifying marks. A cable service provider is not required to transmit content on a PEG channel that is branded with the logo, name, or other identifying marks of another cable service provider.

"**§ 66-358. Transmission of PEG channels.**

(a) Service. – When a cable service provider operating under a State-issued franchise begins providing cable service in an area, the service must include the transmission of PEG channels by one of the following methods:

(1) Interconnection with another cable system operated in its service area. A cable service provider operating in the same service area as a provider under a State-issued franchise must interconnect its cable system on reasonable and competitively neutral terms with the other provider's cable system when it receives a written request for interconnection and may not refuse to interconnect on these terms. Interconnection may be accomplished by direct cable, microwave link, satellite, or another method of connection.

(2) Transmission of the signal from each PEG channel programmer's origination site, if the origination site is in the provider's service area.

(b) Signal. – All PEG channel programming provided to a cable service provider for transmission must meet the federal National Television System Committee standards or the Advanced Television Systems Committee Standards. If a PEG channel programmer complies with these standards and the cable service provider cannot transmit the programming without altering the transmission signal, then the cable service provider must do one of the following:

(1) Alter the transmission signal to make it compatible with the technology or protocol the cable service provider uses to deliver its cable service.

(2) Provide to the county or city the equipment needed to alter the transmission signal to make it compatible with the technology or protocol the cable service provider uses to deliver its cable service.

"**§ 66-359. PEG channel grants.**

(a) PEG Channel Fund. – The PEG Channel Fund is created as an interest-bearing special revenue fund. It consists of revenue allocated to it under G.S. 105-164.44I(b) and any other revenues appropriated to it. The e-NC Authority, created under G.S. 143B-437.46, administers the Fund.

(b) Grants. – A county or city may apply to the e-NC Authority for a grant from the PEG Channel Fund. In awarding grants from the Fund, the e-NC Authority must to the extent possible select applicants from all parts of the State based upon need. Grants from the Fund are subject to the following limitations:

(1) The grant may not exceed twenty thousand dollars ($20,000).

(2) The applicant must match the grant on a dollar-for-dollar basis.
(3) The grant may be used only for capital expenditures necessary to provide PEG channel programming.
(4) An applicant may receive no more than one grant per fiscal year.

(c) Reports. – The e-NC Authority must publish an annual report on grants awarded under this section. The report must list each grant recipient, the amount of the grant, and the purpose of the grant.

"**§ 66-360. Service to public building.**

At the written request of a county or city, a cable service provider operating under a State-issued franchise must provide cable service without charge to a public building located within 125 feet of the provider's cable system. The required service is the basic, or lowest-priced, service the provider offers to customers. The terms and conditions that apply to service provided to a retail customer apply to the service provided to the public building. Only one service outlet is required for a building. The cable service provider is not required to provide concealed inside wiring. A public building is a building used as a public school, a charter school, a county or city library, or a function of the county or city."

SECTION 2. G.S. 105-164.3 is amended by adding a new subdivision to read:

"**§ 105-164.3. Definitions.**

The following definitions apply in this Article:

...

(50c) Video programming. – Programming provided by, or generally considered comparable to programming provided by, a television broadcast station, regardless of the method of delivery."

SECTION 3. G.S. 105-164.4(a)(6) reads as rewritten:

"(6) The combined general rate applies to the gross receipts derived from providing ~~any of the following broadcast services~~ video programming to a subscriber in this State. A cable service provider, a direct-to-home satellite service provider, and any other person engaged in the business of providing ~~any of these services~~ video programming is considered a retailer under this ~~Article:~~Article.

~~a. Direct-to-home satellite service.~~

~~b. Cable service.~~"

SECTION 4. G.S. 105-164.4C(d) is recodified as G.S. 105-164.4D with the catchline "Bundled services."

SECTION 5. G.S. 105-164.4D, as recodified by Section 4 of this act, reads as rewritten:

"**§ 105-164.4D. Bundled services.**

~~Bundled Services.~~ When a taxable ~~telecommunications~~ service is bundled with a service that is not taxable, the tax applies to the gross receipts from the taxable service in the bundle as follows:

(1) If the service provider offers all the services in the bundle on an unbundled basis, tax is due on the unbundled price of the taxable

service, less the discount resulting from the bundling. The discount for a service as the result of bundling is the proportionate price decrease of the service, determined on the basis of the total unbundled price of all the services in the bundle compared to the bundled price of the services.

(2) If the service provider does not offer one or more of the services in the bundle on an unbundled basis, tax is due on the taxable service based on a reasonable allocation of revenue to that service. If the service provider maintains an account for revenue from a taxable service, the service provider's allocation of revenue to that service for the purpose of determining the tax due on the service must reflect its accounting allocation of revenue to that service."

SECTION 6. The catchline to G.S. 105-164.12B reads as rewritten:

"**§ 105-164.12B. ~~Bundled transactions.~~Tangible personal property bundled with service contract.**"

SECTION 7. G.S. 105-164.44F(a) reads as rewritten:

"(a) Amount. – The Secretary must distribute ~~to the cities~~ part of the taxes imposed by G.S. 105-164.4(a)(4c) on telecommunications service. The Secretary must make the distribution within 75 days after the end of each calendar quarter. The amount the Secretary must distribute is ~~eighteen and three one-hundredths percent (18.03%)~~ the following percentages of the net proceeds of the taxes collected during the ~~quarter,~~ quarter:

(1) Eighteen and three one-hundredths percent (18.03%), minus two million six hundred twenty thousand nine hundred forty-eight dollars ~~($2,620,948).~~($2,620,948), must be distributed to cities in accordance with this section. ~~This~~ The deduction is one-fourth of the annual amount by which the distribution to cities of the gross receipts franchise tax on telephone companies, imposed by former G.S. 105-20, was required to be reduced beginning in fiscal year 1995-96 as a result of the "freeze deduction." ~~The Secretary must distribute the specified percentage of the proceeds, less the "freeze deduction" among the cities in accordance with this section.~~

(2) Seven and twenty-three one-hundredths percent (7.23%) must be distributed to counties and cities as provided in G.S. 105-164.44I."

SECTION 8. Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-164.44I. Distribution of part of sales tax on video programming service and telecommunications service to counties and cities.**

(a) Distribution. – The Secretary must distribute to the counties and cities part of the taxes imposed by G.S. 105-164.4(a)(4c) on telecommunications service and G.S. 105-164.4(a)(6) on video programming service. The Secretary must make the distribution within 75 days after the end of each calendar quarter. The amount the Secretary must distribute is the sum of the revenue listed in this subsection. The Secretary must distribute two million dollars ($2,000,000) of this amount in accordance

with subsection (b) of this section and the remainder in accordance with subsections (c) and (d) of this section. The revenue to be distributed under this section consists of the following:

(1) The amount specified in G.S. 105-164.44F(a)(2).

(2) Twenty-two and sixty-one one-hundredths percent (22.61%) of the net proceeds of the taxes collected during the quarter on video programming, other than on direct-to-home satellite service.

(3) Thirty-seven percent (37%) of the net proceeds of the taxes collected during the quarter on direct-to-home satellite service.

(b) Supplemental PEG Support. – The Secretary must include the applicable amount of supplemental PEG channel support in each quarterly distribution to a county or city. The amount to include is one-fourth of twenty-five thousand dollars ($25,000) for each qualifying PEG channel operated by the county or city. The amount of money distributed under this subsection may not exceed two million dollars ($2,000,000) in a fiscal year. If the amount to be distributed for qualifying PEG channels in a fiscal year would otherwise exceed this maximum amount, the Secretary must proportionately reduce the applicable amount distributable for each PEG channel. If the amount to be distributed for qualifying PEG channels in a fiscal year is less than two million dollars ($2,000,000), the Secretary must credit the excess amount to the PEG Channel Fund, established in G.S. 66-359.

A county or city must certify to the Secretary by July 15 of each year the number of qualifying PEG channels it operates. A qualifying PEG channel is one that meets the programming requirements under G.S. 66-357(d). A county or city may not receive PEG channel support under this subsection for more than three qualifying PEG channels.

The amount included under this subsection in a distribution to a county or city is intended to supplement the PEG channel support available in the amount distributed under this section. The money distributed to a county or city under this subsection must be used by it for the operation and support of PEG channels. For purposes of this subsection, the term "PEG channel" has the same meaning as in G.S. 66-350.

(c) 2006-2007 Fiscal Year Distribution. – The share of a county or city is its proportionate share of the amount to be distributed to all counties and cities under this subsection. The proportionate share of a county or city is the base amount for the county or city compared to the base amount for all other counties and cities. The base amount of a county or city that did not impose a cable franchise tax under G.S. 153A-154 or G.S. 160A-214 before July 1, 2006, is two dollars ($2.00) times the most recent annual population estimate for that county or city. The base amount of a county or city that imposed a cable franchise tax under either G.S. 153A-154 or G.S. 160A-214 before July 1, 2006, is the amount of cable franchise tax and subscriber fee revenue the county or city certifies to the Secretary that it imposed during the first six months of the 2006-2007 fiscal year. A county or city must make this certification by January 15, 2007. The certification must specify the amount of revenue that is derived from the cable franchise tax and the amount that is derived from the subscriber fee.

(d) Subsequent Distributions. – For subsequent fiscal years, the Secretary must multiply the amount of a county's or city's share under this section for the preceding fiscal year by the percentage change in its population for that fiscal year and add the result to the county's or city's share for the preceding fiscal year to obtain the county's or city's adjusted amount. Each county's or city's proportionate share for that year is its adjusted amount compared to the sum of the adjusted amounts for all counties and cities.

(e) Use of Proceeds. – A county or city that imposed subscriber fees during the first six months of the 2006-2007 fiscal year must use a portion of the funds distributed to it under subsections (c) and (d) of this section for the operation and support of PEG channels. The amount of funds that must be used for PEG channel operation and support is two times the amount of subscriber fee revenue the county or city certified to the Secretary that it imposed during the first six months of the 2006-2007 fiscal year. The remainder of the distribution may be used for any public purpose.

(f) Late Information. – A county or city that does not submit information that the Secretary needs to make a distribution by the date the information is due is excluded from the distribution. If the county or city later submits the required information, the Secretary must include the county or city in the distribution for the quarter that begins after the date the information is received.

(g) Population Determination. – In making population determinations under this section, the Secretary must use the most recent annual population estimates certified to the Secretary by the State Budget Officer. For purposes of the distributions made under this section, the population of a county is the population of its unincorporated areas plus the population of an ineligible city in the county, as determined under subsection (g) of this section.

(h) City Changes. – The following changes apply when a city alters its corporate structure or incorporates:

(1) If a city dissolves and is no longer incorporated, the proportional shares of the remaining counties and cities must be recalculated to adjust for the dissolution of that city.

(2) If two or more cities merge or otherwise consolidate, their proportional shares are combined.

(3) If a city divides into two or more cities, the proportional share of the city that divides is allocated among the new cities on a per capita basis.

(4) If a city incorporates after January 1, 2007, and the incorporation is not addressed by subdivisions (2) or (3) of this subsection, the share of the county in which the new city is located is allocated between the county and the new city on a per capita basis.

(i) Ineligible Cities. – An ineligible city is disregarded for all purposes under this section. A city incorporated on or after January 1, 2000, is not eligible for a distribution under this section unless it meets both of the following requirements:

(1) It is eligible to receive funds under G.S. 136-41.2.

(2) A majority of the mileage of its streets is open to the public.

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

SECTION 9. G.S. 105-164.21B is repealed.

SECTION 10. G.S. 153A-137 is repealed.

SECTION 11. G.S. 153A-154 is repealed.

SECTION 12. G.S. 160A-211 reads as rewritten:

"**§ 160A-211. Privilege license taxes.**

(a) Authority. – Except as otherwise provided by law, a city shall have power to levy privilege license taxes on all trades, occupations, professions, businesses, and franchises carried on within the city. A city may levy privilege license taxes on the businesses that were formerly taxed by the State under the following sections of Article 2 of Chapter 105 of the General Statutes only to the extent the sections authorized cities to tax the businesses before the sections were repealed:

G.S. 105-36	Amusements – Manufacturing, selling, leasing, or distributing moving picture films.
G.S. 105-36.1	Amusements – Outdoor theatres.
G.S. 105-37	Amusements – Moving pictures – Admission.
G.S. 105-42	Private detectives and investigators.
G.S. 105-45	Collecting agencies.
G.S. 105-46	Undertakers and retail dealers in coffins.
G.S. 105-50	Pawnbrokers.
G.S. 105-51.1	Alarm systems.
G.S. 105-53	Peddlers, itinerant merchants, and specialty market operators.
G.S. 105-54	Contractors and construction companies.
G.S. 105-55	Installing elevators and automatic sprinkler systems.
G.S. 105-61	Hotels, motels, tourist courts and tourist homes.
G.S. 105-62	Restaurants.
G.S. 105-65	Music machines.
G.S. 105-65.1	Merchandising dispensers and weighing machines.
G.S. 105-66.1	Electronic video games.
G.S. 105-74	Pressing clubs, dry cleaning plants, and hat blockers.
G.S. 105-77	Tobacco warehouses.
G.S. 105-80	Firearms dealers and dealers in other weapons.
G.S. 105-85	Laundries.
G.S. 105-86	Outdoor advertising.
G.S. 105-89	Automobiles, wholesale supply dealers, and service stations.
G.S. 105-89.1	Motorcycle dealers.
G.S. 105-90	Emigrant and employment agents.
G.S. 105-91	Plumbers, heating contractors, and electricians.

G.S. 105-97	Manufacturers of ice cream.
G.S. 105-98	Branch or chain stores.
G.S. 105-99	Wholesale distributors of motor fuels.
G.S. 105-102.1	Certain cooperative associations.
G.S. 105-102.5	General business license.

(b) Barbershop and Salon Restriction. – A privilege license tax levied by a city on a barbershop or a beauty salon may not exceed two dollars and fifty cents ($2.50) for each barber, manicurist, cosmetologist, beautician, or other operator employed in the barbershop or beauty salon.

(c) ~~Piped Gas Restriction.~~ Prohibition.– A city may not ~~levy a privilege license tax on a person who is engaged in the business of supplying piped natural gas and is subject to tax under Article 5E of Chapter 105 of the General Statutes.~~ impose a license, franchise, or privilege tax on a person engaged in any of the businesses listed in this subsection. These businesses are subject to a State tax for which the city receives a share of the tax revenue.

(1) Supplying piped natural gas taxed under Article 5E of Chapter 105 of the General Statutes.

(2) Providing telecommunications service taxed under G.S. 105-164.4(a)(4c).

(3) Providing video programming taxed under G.S. 105-164.4(a)(6).

~~(d) Telecommunications Restriction. A city may not impose a license, franchise, or privilege tax on a company taxed under G.S. 105-164.4(a)(4c).~~"

SECTION 13. G.S. 160A-214 is repealed.

SECTION 14. G.S. 160A-296(a) reads as rewritten:

"(a) A city shall have general authority and control over all public streets, sidewalks, alleys, bridges, and other ways of public passage within its corporate limits except to the extent that authority and control over certain streets and bridges is vested in the Board of Transportation. General authority and control includes but is not limited ~~to:~~to all of the following:

(1) The duty to keep the public streets, sidewalks, alleys, and bridges in proper ~~repair;~~repair.

(2) The duty to keep the public streets, sidewalks, alleys, and bridges open for travel and free from unnecessary ~~obstructions;~~obstructions.

(3) The power to open new streets and alleys, and to widen, extend, pave, clean, and otherwise improve existing streets, sidewalks, alleys, and bridges, and to acquire the necessary land therefor by dedication and acceptance, purchase, or eminent ~~domain;~~domain.

(4) The power to close any street or alley either permanently or ~~temporarily;~~temporarily.

(5) The power to regulate the use of the public streets, sidewalks, alleys, and ~~bridges;~~bridges.

(6) The power to regulate, license, and prohibit digging in the streets, sidewalks, or alleys, or placing therein or thereon any pipes, poles,

wires, fixtures, or appliances of any kind either on, above, or below the ~~surface;~~.surface. In exercising this power, a city may not impose a fee or charge for use of the public right-of-way unless the fee or charge applies uniformly to all non-municipal users of the public right-of-way.

(7) The power to provide for lighting the streets, alleys, and bridges of the ~~city; and~~city.

(8) The power to grant easements in street rights-of-way as permitted by G.S. 160A-273.

SECTION 15. G.S. 160A-319(a) reads as rewritten:

"(a) A city shall have authority to grant upon reasonable terms franchises for ~~the operation within the city of~~ a telephone system and any of the enterprises listed in ~~G.S. 160A-311 and for the operation of telephone systems.~~ G.S. 160A-311, except a cable television system. A franchise granted by a city authorizes the operation of the franchised activity within the city. No franchise shall be granted for a period of more than 60 years, except that a franchise for solid waste collection or disposal systems and facilities shall not be granted for a period of more than 30 ~~years and cable television franchises shall not be granted for a period of more than 20~~ years. Except as otherwise provided by law, when a city operates an enterprise, or upon granting a franchise, a city may by ordinance make it unlawful to operate an enterprise without a franchise."

SECTION 16. To make the distribution required under G.S. 105-164.44I(c), as enacted by this act, for the 2006-2007 fiscal year, a county or city must certify to the Secretary of Revenue by January 15, 2007, the number of qualifying PEG channels it operates.

SECTION 17. A primary purpose of this act is to promote consumer choice in video service providers. A premise of this goal is that increased competition will lead to improved service. Under competition, a customer who is dissatisfied with service by one cable service provider will have the option of choosing a different service provider.

G.S. 66-356, as enacted by this act, designates the Consumer Protection Division of the Attorney General's Office as the agency to receive and respond to unresolved customer complaints about cable service provided by the holder of a State-issued franchise. The transition from local franchise agreements to State-issued franchises will occur gradually.

Due to the expected improvement in customer service and the gradual change to State-issued franchises, the impact of the requirement in new G.S. 66-356 on the staffing needs of the Consumer Protection Division is not clear. The Office of the Attorney General is therefore requested to monitor the number and type of cable service complaints it receives from customers in areas served under a local franchise agreement and from areas served under a State-issued franchise to determine whether the Consumer Protection Division needs additional staff to fulfill the duty imposed by new G.S. 66-356 and to make a report concerning staffing to the Fiscal Research Division of the North Carolina General Assembly by April 1, 2007.

SECTION 18. The Secretary of State has no authority to determine whether a person who is providing video programming is providing cable service over a cable

system. An award of a State-issued franchise under Article 42 of Chapter 66 of the General Statutes, as enacted by this act, does not affect a determination of whether video programming provided by the holder of the franchise is considered cable service provided over a cable system under federal law or under a state law that applies substantially the same definitions of "cable service" and "cable system" as federal law.

SECTION 19. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 20. The Revenue Laws Study Committee must review the effect Article 42 of Chapter 66, as enacted by this act, has on the following to determine if any changes to the law are needed and must report its findings to the 2009 Session of the North Carolina General Assembly:

(1) Competition in video programming services.

(2) The number of cable service subscribers, the price of cable service by service tier, and the technology used to deliver the service.

(3) The deployment of broadband in the State.

SECTION 21. This act becomes effective January 1, 2007. Sections 7 and 8 of this act apply to the distribution made within 75 days after March 31, 2007, for the quarter starting January 1, 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 2047*

Short Title:	Video Service Competition Act.	(Public)
Sponsors:	Representatives Carney, Luebke, McComas, Wainwright (Primary Sponsors); Brubaker, Church, Hill, Wilkins, Adams, and Faison.	
Referred to:	Finance.	

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO PROMOTE CONSUMER CHOICE IN VIDEO SERVICE PROVIDERS AND TO ESTABLISH UNIFORM TAXES FOR VIDEO PROGRAMMING SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 66 of the General Statutes is amended by adding a new Article to read:

"Article 42.

"State Franchise for Cable Television Service.

"**§ 66-350. Definitions.**

The following definitions apply in this Article:

(1) Cable service. – Defined in G.S. 105-164.3.

(2) Cable system. – Defined in 47 U.S.C. § 522.

(3) Channel. – A portion of the electromagnetic frequency spectrum that is used in a cable system and is capable of delivering a television channel.

(4) Commission. – The North Carolina Utilities Commission.

(5) Existing agreement. – A local franchise agreement that was awarded under G.S. 153A-137 or G.S. 160A-319 and is in effect on January 1, 2007.

(6) Pass a household. – Make service available to a household, regardless of whether the household subscribes to the service.

(7) PEG channel. – A public, educational, or governmental access channel provided to a county or city.

"**§ 66-351. State franchising authority.**

(a) Authority. – The North Carolina Utilities Commission is designated the exclusive franchising authority in this State for cable service provided over a cable system. This designation replaces the authorization to counties and cities in former

G.S. 153A-137 and G.S. 160A-319 to award a franchise for cable service. This designation is effective January 1, 2007. After this date, a county or city may not award or renew a franchise for cable service.

(b) Award and Scope. – The Commission is considered to have awarded a franchise to a person who files a notice of service under G.S. 66-352. A franchise for cable service authorizes the holder of the franchise to construct and operate a cable system over public rights-of-way within the area to be served. Chapter 160A of the General Statutes governs the regulation of public rights-of-way by a city.

"**§ 66-352. Notice and commencement of service.**

(a) Notice of Service. – A person who intends to provide cable service over a cable system in an area must file a notice of service with the Commission before providing the service. The notice is effective when it is filed with the Commission. The notice of service must include all of the following:

(1) The applicant's name and principal place of business.

(2) A description and map of the area to be served.

(3) A list of each county and city in which the described service area is located, in whole or in part.

(4) A schedule indicating when service is expected to be offered in part or all of the service area.

(b) Initial Service. – A person who files a notice of service under subsection (a) of this section must begin providing cable service in the service area described in the notice within 120 days after the notice is filed. If cable service does not begin within this period, the notice of service terminates 130 days after it was filed. If cable service begins within this period, the holder of the State-issued franchise must file a report of initial service with the Commission within 10 days after the cable service begins. Cable service begins when it passes one or more households in the described service area. This subsection does not apply to a cable service provider who terminates an existing agreement whose franchise area includes all of the service area described in a notice of service filed by the provider under subsection (a) of this section.

A report of initial service for a service area must include all of the following:

(1) The effective date of a notice of service for that area.

(2) A description and map of the service area.

(3) A statement that cable service has begun in the service area.

(c) Extension. – A person who intends to provide cable service over a cable system in an area that is contiguous with but outside the service area described in a notice of service on file with the Commission must file a notice of service under subsection (a) of this section that includes the proposed area. The initial service requirements in subsection (b) of this section apply to the proposed area. If the map of the area to be served includes any area that is part of the service area of another State-issued franchise, the termination of a notice of service for the proposed area for failure to begin service within the required time does not affect the status of the other State-issued franchise.

(d) Withdrawal. – A person may withdraw a notice of service by filing a notice of withdrawal with the Commission. The notice of withdrawal must be filed at least 90 days before the service is withdrawn.

"**§ 66-353. Annual service report.**

A holder of a State-issued franchise must file an annual service report with the Commission. The report must be filed on or before July 15 of each year. The report must include all of the following:

(1) The effective date of a notice of service for that area.
(2) A description and map of the service area.
(3) The approximate number of households in the service area.
(4) A description and a map of the households passed in the service area as of July 1.
(5) The percentage of households passed in the service area as of July 1.
(6) The percentage of households passed in the service area as of July 1 of any preceding year for which a report was required under this subsection.
(7) A schedule indicating when service is expected to be offered in part or all of the service area, to the extent the schedule differs from one included in the notice of service or in a report previously submitted under this subsection, and an explanation of the reason for the new schedule.

"**§ 66-354. General filing and report requirements.**

A document filed with the Commission under this section must be signed by an officer or general partner of the person submitting the document. Within five days after a person files a document with the Commission under this section, the person must send a copy of the document to any county or city included in the service area described in the document. A document filed under this section is a public record as defined in G.S. 132-1.

A successor in interest to a person who has filed a notice of service is not required to file another notice of service. When a change in ownership occurs, the owner must file a notice of change in ownership with the Commission within 14 days after the change becomes effective.

"**§ 66-355. Effect on existing local franchise agreement.**

(a) Existing Agreement. – This Article does not affect an existing agreement except as follows:

(1) Effective January 1, 2007, gross revenue used to calculate the payment of the franchise tax imposed by G.S. 153A-154 or G.S. 160A-214 does not include gross receipts from cable service subject to sales tax under G.S. 105-164.4. This exclusion does not otherwise affect the calculation of gross revenue and the payment to counties and cities of franchise tax revenue under existing agreements that have not been terminated under subsection (b) of this section.
(2) A cable service provider under an existing agreement may terminate the agreement in accordance with subsection (b) of this section when a

report of initial service filed under G.S. 66-352 indicates that one or more households in the franchise area of the existing agreement are passed by both the cable service provider under the existing agreement and the holder of a State-issued franchise.

(b) Termination. – To terminate an existing agreement, a cable service provider must file a notice of termination with the affected county or city and file a notice of service with the Commission. A termination of an existing agreement becomes effective at the end of a calendar quarter that is at least 30 days after the notice of termination is filed with the affected county or city. A termination of an existing agreement ends the obligations under the agreement as of the effective date of the termination but does not affect the rights or liabilities of the county or city, a taxpayer, or another person arising under the existing agreement before the effective date of the termination.

"**§ 66-356. Service standards and requirements.**

(a) Discrimination Prohibited. – A person who provides cable service over a cable system may not deny access to the service to any group of potential residential subscribers within the filed service area because of the race or income of the residents. A violation of this subsection is considered an unfair or deceptive act or practice under G.S. 75-1.1.

In determining whether a cable service provider has violated this subsection with respect to a group of potential residential subscribers in a service area, the following factors must be considered:

(1) The length of time since the provider filed the notice of service for the area. If less than a year has elapsed since the notice of service was filed, it is conclusively presumed that a violation has not occurred.

(2) The cost of providing service to the affected group due to distance from facilities, density, or other factors.

(3) Technological impediments to providing service to the affected group.

(4) Inability to obtain access to property required to provide service to the affected group.

(b) FCC Standards. – A person who provides cable service over a cable system must comply with the customer service requirements in 47 C.F.R. § 76.309 and emergency alert requirements established by the Federal Communications Commission. The Consumer Protection Division of the Attorney General's office is designated as the State agency to receive and respond to customer complaints concerning cable service. The number for the Division must be printed on the customer's bill.

(c) No Build-Out. – No build-out requirements apply to a person who provides cable service under a State-issued franchise.

"**§ 66-357. Availability and use of PEG channels.**

(a) Application. – This section applies to a person who provides cable service under a State-issued franchise. It does not apply to a person who provides cable service under an existing agreement.

(b) Local Request. – A county or city must make a written request to a cable service provider for PEG channel capacity. The request must include a statement describing the county's or city's plan to operate and program each channel requested.

The cable service provider must provide the requested PEG channel capacity within 120 days after it receives the written request.

(c) Initial PEG Channels. – If an area is included in both the franchise area of an existing agreement and the service area of a State-issued franchise, the terms of the existing agreement, as of the filing date on the notice of service for the State-issued franchise, determine the required number, service tier placement, and transmission quality of initial PEG channels. The cable service provider must provide the number of PEG channels activated under those terms, giving equivalent service tier placement and transmission quality to those channels. The cable service provider must maintain the same channel designation for a PEG channel unless the service area of the State-issued franchise includes PEG channels that are operated by different counties or cities and those PEG channels have the same channel designation. The expiration of an existing agreement after January 1, 2007, does not affect the requirements in this subsection.

If no existing agreement includes any part of the service area of a State-issued franchise, then the number, service tier placement, and transmission quality of the initial PEG channels a cable service provider must provide depends upon the population of the city in which part or all of the service area is located. If the city's population is at least 50,000, the cable service provider must provide up to three PEG channels on a basic service tier. If the city's population is less than 50,000, a cable service provider must provide up to two PEG channels on a basic service tier. The transmission quality of these PEG channels must be equivalent to those of the closest city covered by an existing agreement.

(d) Additional PEG Channels. – A county or city that does not have seven PEG channels, including the initial PEG channels, is eligible for an additional PEG channel if it meets the programming requirements in this subsection. A county or city that has seven PEG channels is not eligible for an additional channel.

A county or city that meets the programming requirements in this subsection may make a written request under subsection (b) of this section for an additional channel. The additional channel may be provided on any service tier. The transmission quality of the additional channel must be at least equivalent to the transmission quality of the other channels provided.

The PEG channels operated by a county or city must meet the following programming requirements in order for the county or city to obtain an additional channel:

(1) All of the PEG channels must have scheduled programming for at least eighty percent (80%) of the time for at least eight hours a day.

(2) The programming content of each of the PEG channels must not repeat more than fifteen percent (15%) of the programming content on any of the other PEG channels.

(3) No more than fifteen percent (15%) of the programming content on any of the PEG channels may be character-generated programming.

(e) Use of Channels. – If a county or city no longer provides any programming for transmission over a PEG channel it has activated, the channel may be reprogrammed at the cable service provider's discretion. A cable service provider must give at least 60

days notice to a county or city before it reprograms a PEG channel that is not used. The cable service provider must restore a previously lost PEG channel within 120 days of the date a county or city certifies to the provider a schedule that demonstrates the channel will be used.

(f) Operation of Channels. – A cable service provider is responsible only for the transmission of a PEG channel. The county or city to which the PEG channel is provided is responsible for the operation and content of the channel. A county or city that provides content to a cable service provider for transmission on a PEG channel is considered to have authorized the provider to transmit the content throughout the provider's service area, regardless of whether part of the service area is outside the boundaries of the county or city.

All programming on a PEG channel must be noncommercial. A cable service provider is not required to transmit content on a PEG channel that is branded with the logo, name, or other identifying marks of another cable service provider.

"**§ 66-358. Transmission of PEG channels.**

(a) Service. – When a cable service provider operating under a State-issued franchise begins providing cable service in an area, the service must include the transmission of PEG channels by one of the following methods:

(1) Interconnection of its cable system on reasonable and competitively neutral terms with any other cable system operated in its franchise or service area. Interconnection may be accomplished by direct cable, microwave link, satellite, or other method of connection.

(2) Transmission of the signal from each PEG channel programmer's origination site.

(b) Signal. – All PEG channel programming must meet the minimum recognized technical standards for the format used. If a PEG channel programmer transmits its signal in a format a cable service provider cannot transmit without altering the transmission signal, then the cable service provider must do one of the following:

(1) Alter the transmission signal to make it compatible with the technology or protocol the cable service provider uses to deliver its cable service.

(2) Provide to the county or city equipment needed to alter the transmission signal to make it compatible with the technology or protocol the cable service provider uses to deliver its cable service.

"**§ 66-359. Service to public building.**

At the written request of a county or city, a cable service provider operating under a State-issued franchise must provide cable service without charge to a public building located within 125 feet of the provider's cable system. The required service is the basic, or lowest-priced, service the provider offers to customers. The terms and conditions that apply to service provided to a retail customer apply to the service provided to the public building. Only one service outlet is required for a building. The cable service provider is not required to provide concealed inside wiring. A public building is a building used as a public school, a charter school, a county or city library, or a function of the county or city."

SECTION 2. G.S. 105-164.3 is amended by adding a new subdivision to read:

"**§ 105-164.3. Definitions.**

The following definitions apply in this Article:

...

(50c) Video programming. – Programming provided by, or generally considered comparable to programming provided by, a television broadcast station, regardless of the method of delivery."

SECTION 3. G.S. 105-164.4(a)(6) reads as rewritten:

"(6) The combined general rate applies to the gross receipts derived from providing ~~any of the following broadcast services~~ video programming to a subscriber in this State. A cable service provider, a direct-to-home satellite service provider, and any other person engaged in the business of providing ~~any of these services~~ video programming is considered a retailer under this ~~Article:~~Article.

~~a. Direct-to-home satellite service.~~

~~b. Cable service.~~"

SECTION 4. G.S. 105-164.4C(d) is recodified as G.S. 105-164.4D with the catchline "Bundled services."

SECTION 5. G.S. 105-164.4D, as recodified by Section 4 of this act, reads as rewritten:

"**§ 105-164.4D. Bundled services.**

~~Bundled Services.~~ When a taxable ~~telecommunications~~ service is bundled with a service that is not taxable, the tax applies to the gross receipts from the taxable service in the bundle as follows:

(1) If the service provider offers all the services in the bundle on an unbundled basis, tax is due on the unbundled price of the taxable service, less the discount resulting from the bundling. The discount for a service as the result of bundling is the proportionate price decrease of the service, determined on the basis of the total unbundled price of all the services in the bundle compared to the bundled price of the services.

(2) If the service provider does not offer one or more of the services in the bundle on an unbundled basis, tax is due on the taxable service based on a reasonable allocation of revenue to that service. If the service provider maintains an account for revenue from a taxable service, the service provider's allocation of revenue to that service for the purpose of determining the tax due on the service must reflect its accounting allocation of revenue to that service."

SECTION 6. The catchline to G.S. 105-164.12B reads as rewritten:

"**§ 105-164.12B. ~~Bundled transactions.~~Tangible personal property bundled with service contract.**"

SECTION 7. G.S. 105-164.44F(a) reads as rewritten:

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: May 30, 2006

Signed Copy Located in the NCGA Principal Clerk's Offices

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☐ Committee Substitute for

HB 1963 A BILL TO BE ENTITLED AN ACT TO MAKE TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES TO THE REVENUE LAWS AND RELATED STATUTES AND TO IMPROVE THE COLLECTION AND ADMINISTRATION OF THE MOTOR FUEL TAX.

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

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

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 2097*

Short Title:	Property Tax Changes.	(Public)
Sponsors:	Representatives Brubaker; Carney, Church, Hill, Luebke, McComas, Wainwright, Wilkins, and Culp.	
Referred to:	Finance.	

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO MAKE CLARIFYING CHANGES TO THE PROPERTY TAX LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-304(a1) reads as rewritten:

"(a1) Electronic Listing. – The board of county commissioners may, by resolution, provide for electronic listing of ~~business~~ personal property in accordance with procedures prescribed by the board. If the board of county commissioners allows electronic listing of ~~business~~ personal property, the assessor must publish this information, including the timetable and procedures for electronic listing, in the notice required by G.S. 105-296(c)."

SECTION 2. G.S. 105-307 reads as rewritten:

"**§ 105-307. Length of listing period; extension; preliminary work.**

(a) Listing Period. – Unless extended as provided in this section, the period during which property is to be listed for taxation each year begins on the first business day of January and ends on January 31.

(b) General Extensions. – The board of county commissioners may, by resolution, extend the time during which property is to be listed for taxation as provided in this subsection. Any action by the board of county commissioners extending the listing period must be recorded in the minutes of the board, and notice of the extensions must be published as required by G.S. 105-296(c). The entire period for listing, including any extension of time granted, is considered the regular listing period for the particular year within the meaning of this Subchapter.

(1) In nonrevaluation years, the listing period may be extended for up to 30 additional days.

(2) In years of octennial appraisal of real property, the listing period may be extended for up to 60 additional days.

(3) If the county has provided for electronic listing of ~~business~~ personal property under G.S. 105-304, the period for electronic listing of business personal property may be extended up to June 1.

(c) Individual Extensions. – The board of county commissioners shall grant individual extensions of time for the listing of real and personal property upon written request and for good cause shown. The request must be filed with the assessor no later than the ending date of the regular listing period. The board may delegate the authority to grant extensions to the assessor. Extensions granted under this subsection shall not extend beyond April 15. If the county has provided for electronic listing of ~~business~~ personal property under G.S. 105-304, the period for electronic listing of business personal property is as provided in subsection (b) of this section.

(d) Preliminary Work. – The assessor may conduct preparatory work before the listing period begins, but may not make a final appraisal of property before the day as of which the value of the property is to be determined under G.S. 105-285."

SECTION 3. G.S. 105-330.10 reads as rewritten:

"**§ 105-330.10. (Effective until July 1, 2009) Disposition of interest.**

Sixty percent (60%) of the first month's interest collected on unpaid taxes pursuant to G.S. 105-330.4 shall be transferred on a monthly basis to the Combined Motor Vehicle and Registration Account created within the Treasurer's Office. The North Carolina Association of County Commissioners shall direct the Treasurer to distribute the funds in the Account to the Division of Motor Vehicles for the purpose of developing and implementing an integrated computer system within the Division of Motor Vehicles that would allow for the combined assessment, billing, and collection of property taxes on motor vehicles and the issuance of registration plates. The Treasurer shall report to the Revenue Laws Study Committee semiannually with the first report due by April 30, 2006. The report shall contain a detailed description of the amount of moneys transferred to the Account and distributed from the Account."

SECTION 4. G.S. 105-277.4 is amended by adding a new subsection to read:

"(a1) Late Application. – Upon a showing of good cause by the applicant for failure to make a timely application as required by subsection (a) of this section, an application may be approved by the board of equalization and review or, if that board is not in session, by the board of county commissioners. An untimely application approved under this subsection applies only to property taxes levied by the county or municipality in the calendar year in which the untimely application is filed. Decisions of the county board may be appealed to the Property Tax Commission."

SECTION 5. G.S. 105-321(d) is repealed.

SECTION 6. G.S. 105-378 is amended adding a new subsection to read:

"(d) Enforcement and Collection Delayed Pending Appeal. – When the board of county commissioners or municipal governing body delivers a tax receipt to a tax collector for any assessment that has been or is subsequently appealed to the Property Tax Commission, the tax collector may not seek collection of taxes or enforcement of a tax lien resulting from the assessment until the appeal has been finally adjudicated. The tax collector, however, may send an initial bill or notice to the taxpayer."

SECTION 7. G.S. 105-373(a) reads as rewritten:

"(a) Annual Settlement of Tax Collector. –

(1) Preliminary Report. – After July 1 and before he is charged with taxes for the current fiscal year, the tax collector shall make a sworn report to the governing body of the taxing unit showing:

a. A list of the persons owning real property whose taxes for the preceding fiscal year remain unpaid and the principal amount owed by each person; and

b. A list of the persons not owning real property whose personal property taxes for the preceding fiscal year remain unpaid and the principal amount owed by each person. (To this list the tax collector shall append his statement under oath that he has made diligent efforts to collect the taxes due from the persons listed out of their personal property and by other means available to him for collection, and he shall report such other information concerning these taxpayers as may be of interest to or required by the governing body, including a report of his efforts to make collection outside the taxing unit under the provisions of G.S. 105-364.) The governing body of the taxing unit may publish this list in any newspaper in the taxing unit. The cost of publishing this list shall be paid by the taxing unit.

(2) Insolvents. – Upon receiving the report required by subdivision (a)(1), above the governing body of the taxing unit shall enter upon its minutes the names of persons owing taxes (but who listed no real property) whom it finds to be insolvent, and it shall by resolution designate the list entered in its minutes as the insolvent list to be credited to the tax collector in his settlement.

(3) Settlement for Current Taxes. – After July 1 and before he is charged with taxes for the current fiscal year, the tax collector shall make full settlement with the governing body of the taxing unit for all taxes in his hands for collection for the preceding fiscal year.

a. In the settlement the tax collector shall be charged with:

1. The total amount of all taxes in his hands for collection for the year, including amounts originally charged to him and all amounts subsequently charged on account of discoveries;

2. All penalties, interest, and costs collected by him in connection with taxes for the current year; and

3. All other sums collected by him.

b. The tax collector shall be credited with:

1. All sums representing taxes for the year deposited by him to the credit of the taxing unit or receipted for by a proper official of the unit;

2. Releases duly allowed by the governing body;

3. The principal amount of taxes constituting liens on real property;
4. The principal amount of taxes included in the insolvent list determined in accordance with subdivision (a)(2), above;
5. Discounts allowed by law; ~~and~~
6. Commissions (if any) lawfully payable to the tax collector as ~~compensation.~~compensation; and
7. The principal amount of taxes for any assessment appealed to the Property Tax Commission when the appeal has not been finally adjudicated.

The tax collector shall be liable on his bond for both honesty and faithful performance of duty; for any deficiencies; and, in addition, for all criminal penalties provided by law.

The settlement, together with the action of the governing body with respect thereto, shall be entered in full upon the minutes of the governing body.

(4) Disposition of Tax Receipts after Settlement. – Uncollected taxes allowed as credits in the settlement prescribed in subdivision (a)(3), above, whether represented by tax liens held by the taxing unit or included in the list of insolvents, shall, for purposes of collection, be recharged to the tax collector or charged to some other person designated by the governing body of the taxing unit under statutory authority. The person charged with uncollected taxes shall:

a. Give bond satisfactory to the governing body;
b. Receive the tax receipts and tax records representing the uncollected taxes;
c. Have and exercise all powers and duties conferred or imposed by law upon tax collectors; and
d. Receive compensation as determined by the governing body."

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

HOUSE BILL 2097:
Property Tax Changes

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 1, 2006
Introduced by:	Rep. Brubaker	**Summary by:**	Martha Walston
Version:	First Edition		Committee Counsel

SUMMARY: ***House Bill 2097 is a recommendation of the Department of Revenue and would make the following clarifying changes to the property tax laws:***

- ***Provides for the electronic filing of both business and individual personal property.***
- ***Amends S.L. 2005-294 (AN ACT TO CREATE A COMBINED MOTOR VEHICLE REGISTRATION RENEWAL AND PROPERTY TAX COLLECTION SYSTEM) to clarify that the first month's interest on past due bills would be transferred to a special account. This change reflects the intent of the bill sponsors and supporters.***
- ***Authorizes a county board of equalization and review to approve a late application for present-use value appraisal of property if the applicant demonstrates good cause for the delay.***
- ***Authorizes a tax collector to receive tax receipts for assessments that have been or are subsequently appealed to the Property Tax Commission and to send the taxpayer an initial tax bill or notice; however, the tax collector may not collect on the tax or enforce a tax lien until the appeal has been finally adjudicated.***
- ***Clarifies that the list of items credited to the tax collector in the final assessment to the governing body of the taxing unit shall include the principal amount of taxes for any assessment appealed to the Property Tax Commission when the appeal has not been finally adjudicated.***

Senate Bill 1452, introduced by Senator Hartsell, is a companion bill.

BILL ANALYSIS:

Sections 1 and 2 of the bill provide for the electronic filing of any personal property. Current law allows the board of county commissioners, by resolution, to provide for the electronic listing of business personal property. This language excludes the electronic filing of unlisted automobiles, jet skis, mobile homes, and boats by personal taxpayers. The Department states that there is no reason to limit electronic filing to business personal property.

Current law allows the period for electronic listing of business personal property to be extended to June 1. Section 2 of the bill clarifies that this extension is provided only to business personal property.

Section 3 of the bill makes a clarifying change to legislation that was enacted during the 2005 Session. This change would clarify the intent of the bill's sponsors and supporters. Last Session, the General Assembly ratified House Bill 1779, which creates a combined system for registration and taxation of motor vehicles to become effective July 1, 2009, or upon the earlier creation of a combined registration renewal and tax collection computer system within the

Division of Motor Vehicles. Under the new combined system, consumers will receive one statement per registered vehicle, containing both registration fees and the property taxes and vehicle fees due. Payment of the property taxes are a prerequisite to issuance of or renewal for the registration. Property taxes on the vehicle become due on the date a new registration is applied for or at the end of the grace period following the expiration of a vehicle's current registration. Taxes and registration fees may be collected by the DMV or a DMV agent.

To pay for the new system, the act increased the first month's interest on delinquent registered motor vehicle taxes from 2% to 5%, effective January 1, 2006, and required that 60% of the interest collected on unpaid taxes be transferred on a monthly basis to the Combined Motor Vehicle and Registration Account in the Treasurer's Office. Funds in this Account may only be transferred to the DMV for the purpose of implementing the combined system, at the direction of the North Carolina Association of County Commissioners. The intent of the sponsors to House Bill 1779 and supporters of the bill was that 60% of only the **first month's** interest would be transferred to the Account, not the total interest collected on unpaid taxes. In December, 2005, the North Carolina Department of State Treasurer issued a memorandum directing counties to only remit 60% of the first month's interest to the Treasurer. The memorandum stated that this was the true intent of the bill and that it is anticipated that the language will be corrected during the 2006 Session. The memorandum was sent to all county managers, finance officers, tax administrators, tax assessor, tax collectors, and certified public accountants.

Section 4 of the bill would give a county board of equalization and review the authority to approve a late application for present-use value appraisal of property if the applicant demonstrates good cause for the delay. Under current law, a taxpayer seeking present-use value appraisal of farmland, must file the application within the following time periods:

- An initial application must be filed during the regular listing period of the year for which the benefit of the classification is first claimed, or within 30 days of the date shown on a notice of a change in valuation made pursuant to a county's general reappraisal or horizontal adjustment of real property.
- An application required due to transfer of the land may be submitted at any time during the calendar year but must be submitted within 60 days of the date of the property's transfer.

The bill would allow approval of a late application upon a showing of good cause by the applicant to the board of equalization and review. If the county board of equalization and review is not in session, then the late filing may be approved by the board of county commissioners. Current law allows similar approval for late applications for property tax exemptions or exclusions. (See G.S. 105-282.1(a1).)

Sections 5 and 6 of the bill would allow a tax collector to receive tax receipts for assessments that have been appealed or are subsequently appealed to the Property Tax Commission, but would prohibit the tax collector from collecting the tax or enforcing a tax lien resulting from the assessment until the appeal has been finally adjudicated. Pending final adjudication, the tax collector may send an initial tax bill or notice to the taxpayer.

Each year, the county board of commissioners or the municipal governing body directs the tax collector to collect taxes charged in the tax records and receipts. The tax receipt sets out the name and address of the taxpayer, the assessment of the taxpayer's property, the rate of tax levied, and the amount of property taxes and any penalties due. Current law states that no tax receipts are to be delivered to the tax collector for any assessment appealed to the Property Tax Commission until the appeal has been finally adjudicated. In practice, boards of equalization and review often adjourn on June 30th, except to hear appeals filed prior to June 30th. By August 1, however, the tax collector has received the tax receipts. The proposal validates this practice, but clarifies that the tax collector may not seek any remedies for collection of the taxes or enforcement of the tax lien pending final adjudication of appeal from the assessment. The tax collector, however, may send an initial bill or notice to the taxpayer pending final adjudication. By providing notice pending appeal, the taxpayer may choose to avoid the amount of interest that accrues while the appeal is pending. If the taxpayer wins on appeal, the taxpayer receives a refund of any taxes paid plus interest. Finally, the bill would put a potential buyer of the property on notice of a tax bill, if the property is transferred pending the appeal.

Section 7 of the bill makes clarifying changes to the lists of items credited to the tax collector in the collector's final settlement with the governing body for all taxes in his hands for collection for the preceding fiscal year. Current law provides that the final settlement must contain the items to be charged against the tax collector and the items to be allowed as credits for the collector.[1] The charges and credits should balance. The bill adds to the lists of credits the principal amount of taxes for any assessment appealed to the Property Tax Commission when the appeal has not been finally adjudicated.

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

H2097e1-SMLA

[1] Charges include the total amount of all taxes placed in the collector's hands for collection for the year, all late-listing penalties and costs collected by the collector, all interests on taxes collected by the collector, and any other sums collected or received by the tax collector. Credits include all sums deposited by the collector to the credit of the taxing unit, releases allowed by the governing body, discounts allowed for early payment of taxes, the principal amount of taxes constituting liens against real property, the principal amount of taxes determined to be insolvent and to be allowed as credits, and any commission the collector is entitled to deduct from amounts collected.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 2097 (First Edition)

SHORT TITLE: Property Tax Changes.

SPONSOR(S): Representative Brubaker

FISCAL IMPACT

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

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES:	*No Significant Impact*				
EXPENDITURES:					

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

EFFECTIVE DATE: Becomes effective when law.

BILL SUMMARY:

Sections 1 and 2 of the bill provide for the electronic filing of personal property. Currently, counties are allowed to provide for electronic listing only for business personal property. The Department indicates no reason that this listing mechanism should not be allowed for all personal property. Current law allows the period for electronic listing of business personal property to be extended to June 1. Section 2 of this bill clarifies that this extension is provided only to business personal property.

Section 3 of the bill makes a clarifying change to House Bill 1779, which was enacted during the 2005 Session. The bill creates a combined system for registration and taxation of motor vehicles. The bill increases the first-month interest payments on unpaid vehicle property taxes from 2% to 5% and directs 60% of interest revenue to a special account within the Department of State Treasurer for the purpose of creating a registration renewal and property tax collection computer system within the Division of Motor Vehicles. The intent of the bill, and the practice put into place by the Department of State Treasurer, is to transfer 60% of only the first month of interest on unpaid taxes to the special account. This bill clarifies that the transfer applies to only the month of interest.

Section 4 of the bill would give county boards of equalization and review the authority to approve a late application for present-use value appraisal of property if the applicant demonstrates a good cause for the delay. Current law allows similar approvals for property tax exemptions or exclusions.

Sections 5 and 6 of the bill would allow tax collectors to receive tax receipts for assessments that have been appealed to the Property Tax Commission, but would not allow the collector to collect the tax or enforce a tax lien resulting from the assessment while the appeal is pending. This bill would validate the current practice in which boards of equalization provide tax receipts to collectors by August 1, but clarifies that the collector may not seek remedies for appealed assessments until the appeal is adjudicated.

Section 7 of the bill makes a clarifying change to add taxes appealed to the Property Tax Commission to the list of items credited to the tax collector in the collector's final settlement with the governing body.

ASSUMPTIONS AND METHODOLOGY: All of the proposed changes contained in the bill are administrative or clarifying in nature and would result in no significant fiscal impact.

SOURCES OF DATA: North Carolina Department of Revenue

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Rodney Bizzell

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: May 31, 2006

Signed Copy Located in the NCGA Principal Clerk's Offices

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☐ Committee Substitute for

HB 2097 A BILL TO BE ENTITLED AN ACT TO MAKE CLARIFYING CHANGES TO THE PROPERTY TAX LAWS.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 1802

Short Title:	Reduce Motor Fuels Tax.	(Public)
Sponsors:	Representatives Allred, Pate, Brown, Hilton (Primary Sponsors); Almond, Barnhart, Blust, Capps, Clary, Cleveland, Culp, Current, Daughtry, Dollar, Frye, Gillespie, Grady, Gulley, Hollo, Holloway, Holmes, Howard, Justice, Kiser, Langdon, LaRoque, Lewis, McGee, Moore, Preston, Ray, Rayfield, Setzer, Sherrill, Stam, Starnes, Steen, Stiller, Walend, Walker, Wiley, and Wilson.	
Referred to:	Finance.	

May 9, 2006

A BILL TO BE ENTITLED

AN ACT TO STABILIZE THE MOTOR FUEL TAX BY IMPOSING A CAP ON THE VARIABLE WHOLESALE COMPONENT OF THE MOTOR FUEL TAX RATE AT ITS RATE FOR THE LATTER HALF OF 2004.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-449.80(a) reads as rewritten:

"(a) Rate. – The motor fuel excise tax rate is a flat rate of seventeen and one-half cents (17 1/2¢)a gallon plus a variable wholesale component. The variable wholesale component is either three and one-half cents (3 1/2¢) a gallon or seven percent (7%) of the average wholesale price of motor fuel for the applicable base period, whichever is greater. In no case may the variable wholesale component be greater than seven and one-tenths cents (7.1¢) a gallon.

The two base periods are six-month periods; one ends on September 30 and one ends on March 31. The Secretary must set the tax rate twice a year based on the wholesale price for each base period. A tax rate set by the Secretary using information for the base period that ends on September 30 applies to the six-month period that begins the following January 1. A tax rate set by the Secretary using information for the base period that ends on March 31 applies to the six-month period that begins the following July 1."

SECTION 2. This act becomes effective January 1, 2006.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H **1**

HOUSE BILL 1842

Short Title:	Ensure Integrity of Highway Trust Fund.	(Public)
Sponsors:	Representatives Moore, Clary, LaRoque, Daughtridge (Primary Sponsors); Almond, Barnhart, Blackwood, Brown, Capps, Cleveland, Current, Folwell, Frye, Gillespie, Grady, Gulley, Hilton, Hollo, Holloway, Justus, Lewis, McComas, McGee, Pate, Preston, Rayfield, Setzer, Starnes, Steen, Stiller, Vinson, Walend, Walker, Wiley, and Wilson.	
Referred to:	Finance.	

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO ENSURE THE INTEGRITY OF THE NORTH CAROLINA HIGHWAY TRUST FUND BY ELIMINATING TRANSFERS OF FUNDS FROM THE HIGHWAY TRUST FUND TO THE GENERAL FUND AND REQUIRING THE GENERAL FUND TO REPAY ALL MONIES TRANSFERRED TO IT FROM THE HIGHWAY TRUST FUND AND TO REDUCE AND STABILIZE THE MOTOR FUEL TAX BY IMPOSING A CAP ON THE VARIABLE WHOLESALE COMPONENT OF THE MOTOR FUEL TAX RATE AT THE RATE EFFECTIVE JANUARY 1, 2005.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-187.9(b) is repealed.

SECTION 2. G.S. 105-187.9 is amended by adding a new subsection to read:

"(c) Notwithstanding any other provision of law currently in effect, the General Fund shall repay all funds transferred to it from the Highway Trust Fund since 1989, and said funds shall be appropriated from the Highway Trust Fund in accordance with the provisions of G.S. 136-176."

SECTION 3. G.S. 105-449.80(a) reads as rewritten:

"(a) Rate. – The motor fuel excise tax rate is a flat rate of seventeen and one-half cents (17 1/2¢) a gallon plus a variable wholesale component. The variable wholesale component is either three and one-half cents (3 1/2¢) a gallon or seven percent (7%) of the average wholesale price of motor fuel for the applicable base period, whichever is greater. In no case may the variable wholesale component be greater than nine and one-tenths cents (9.1¢) per gallon.

The two base periods are six-month periods; one ends on September 30 and one ends on March 31. The Secretary must set the tax rate twice a year based on the wholesale price for each base period. A tax rate set by the Secretary using information for the base period that ends on September 30 applies to the six-month period that begins the following January 1. A tax rate set by the Secretary using information for the base period that ends on March 31 applies to the six-month period that begins the following July 1."

SECTION 4. This act becomes effective July 1, 2006.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 1853

Short Title:	Cap Variable Rate of Gasoline Excise Tax.	(Public)
Sponsors:	Representatives Kiser, Justus, Howard (Primary Sponsors); Barnhart, Brown, Church, Current, Frye, Gillespie, Grady, Harrell, Hill, Hilton, Hollo, Holloway, Lewis, McComas, McGee, Pate, Preston, Ray, Rayfield, Setzer, Starnes, Steen, Stiller, Vinson, Walker, Wiley, and Wilson.	
Referred to:	Finance.	

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO STABILIZE THE MOTOR FUEL TAX BY IMPOSING A CAP ON THE VARIABLE WHOLESALE COMPONENT OF THE MOTOR FUEL TAX RATE AT ITS RATE FOR THE LATTER HALF OF 2005.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-449.80(a) reads as rewritten:

"(a) Rate. – The motor fuel excise tax rate is a flat rate of seventeen and one-half cents (17 1/2¢) a gallon plus a variable wholesale component. The variable wholesale component is either three and one-half cents (3 1/2¢) a gallon or seven percent (7%) of the average wholesale price of motor fuel for the applicable base period, whichever is greater. In no case may the variable wholesale component be greater than nine and six-tenths cents (9.6¢) a gallon.

The two base periods are six-month periods; one ends on September 30 and one ends on March 31. The Secretary must set the tax rate twice a year based on the wholesale price for each base period. A tax rate set by the Secretary using information for the base period that ends on September 30 applies to the six-month period that begins the following January 1. A tax rate set by the Secretary using information for the base period that ends on March 31 applies to the six-month period that begins the following July 1."

SECTION 2. This act becomes effective July 1, 2006.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 2172

Short Title:	Reduce and Cap Gas Tax.	(Public)
Sponsors:	Representatives Harrell, Goforth (Primary Sponsors); Daughtridge, England, Ray, Adams, B. Allen, Cleveland, Faison, Frye, Glazier, Harrison, Johnson, Langdon, Preston, Spear, Underhill, Williams, and Wray.	
Referred to:	Finance.	

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO REDUCE THE TAX ON MOTOR FUELS AND TO CAP THE VARIABLE COMPONENT OF THE RATE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-449.80(a) reads as rewritten:

"(a) Rate. – The motor fuel excise tax rate is a flat rate of seventeen and one-half cents (17 1/2¢)a gallon plus a variable wholesale component. The variable wholesale component is either three and one-half cents (3 1/2¢) a gallon or seven percent (7%) of the average wholesale price of motor fuel for the applicable base period, whichever is greater. In no case may the variable wholesale component be greater than nine and six-tenths cents (9.6¢) a gallon.

The two base periods are six-month periods; one ends on September 30 and one ends on March 31. The Secretary must set the tax rate twice a year based on the wholesale price for each base period. A tax rate set by the Secretary using information for the base period that ends on September 30 applies to the six-month period that begins the following January 1. A tax rate set by the Secretary using information for the base period that ends on March 31 applies to the six-month period that begins the following July 1."

SECTION 2. This act becomes effective July 1, 2006.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H **1**

HOUSE BILL 2384

Short Title:	Cap Variable Rate of the Gasoline Excise Tax.	(Public)
Sponsors:	Representatives Gibson, Coates, Underhill, Goforth (Primary Sponsors); Alexander, B. Allen, L. Allen, Bell, Carney, Church, Coleman, Cunningham, England, Faison, Farmer-Butterfield, Fisher, Glazier, Hackney, Haire, Harrison, Hill, Holliman, Howard, Jeffus, Ed Jones, Lewis, Lucas, Luebke, McAllister, McLawhorn, Nye, Parmon, Pierce, Rapp, Saunders, Setzer, Spear, Steen, Tolson, Tucker, Warren, Weiss, Wilkins, Williams, Womble, Wray, and Yongue.	
Referred to:	Finance.	

May 23, 2006

A BILL TO BE ENTITLED

AN ACT TO STABILIZE THE MOTOR FUEL TAX BY IMPOSING A CAP ON THE VARIABLE WHOLESALE COMPONENT OF THE MOTOR FUEL TAX RATE AT ITS CURRENT RATE AND PROVIDING RELIEF FOR CONSUMERS BY PROVIDING FOR PRICE GOUGING INVESTIGATIONS BY THE ATTORNEY GENERAL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-449.80(a) reads as rewritten:

"(a) Rate. – The motor fuel excise tax rate is a flat rate of seventeen and one-half cents (17 1/2¢)a gallon plus a variable wholesale component. The variable wholesale component is either three and one-half cents (3 1/2¢) a gallon or seven percent (7%) of the average wholesale price of motor fuel for the applicable base period, whichever is greater. In no case may the variable wholesale component be greater than twelve and four-tenths cents (12.4¢) a gallon.

The two base periods are six-month periods; one ends on September 30 and one ends on March 31. The Secretary must set the tax rate twice a year based on the wholesale price for each base period. A tax rate set by the Secretary using information for the base period that ends on September 30 applies to the six-month period that begins the following January 1. A tax rate set by the Secretary using information for the base period that ends on March 31 applies to the six-month period that begins the following July 1."

SECTION 2. G.S. 75-38 reads as rewritten:

"**§ 75-38. Prohibit excessive pricing during states of disaster.**

...

(36) To furnish to a taxpayer claiming a credit under G.S. 105-130.47 or G.S. 105-151.29 information from a third party to the extent the information was used by the Secretary to adjust the amount of the credit claimed by the taxpayer."

SECTION 5.(a) G.S. 105-164.3(49) reads as rewritten:

"(49) Use. – Means and includes the exercise of any right or power or dominion whatsoever over tangible personal property or over any service subject to tax under this Article by a purchaser thereof and includes, but is not limited to, any withdrawal from storage, distribution, installation, affixation to real or personal property, or exhaustion or consumption of tangible personal property or any service subject to tax under this Article by the owner or purchaser thereof, but does not include the sale of tangible personal property or of any service subject to tax under this Article in the regular course of business."

SECTION 5.(b) G.S. 105-164.16(a) reads as rewritten:

"(a) General. – Sales and use taxes are payable quarterly, monthly, or semimonthly as specified in this section. A return is due quarterly or monthly as specified in this section. A return must be filed with the Secretary on a form prescribed by the Secretary and in the manner required by the Secretary. A return must be signed by the taxpayer or the taxpayer's agent.

A sales tax return must state the taxpayer's gross sales for the reporting period, the amount and type of sales made in the period that are exempt from tax under G.S. 105-164.13 or are elsewhere excluded from tax, the amount of tax due, and any other information required by the Secretary. A use tax return must state the purchase price of tangible personal property or services sourced to this State that ~~was~~ were purchased or received during the reporting period and ~~is~~ are subject to tax under G.S. 105-164.6, the amount of tax due, and any other information required by the Secretary. Returns that do not contain the required information will not be accepted. When an unacceptable return is submitted, the Secretary will require a corrected return to be filed."

SECTION 6. G.S. 105-164.6(c) reads as rewritten:

"(c) Credit. – A credit is allowed against the tax imposed by this section for the following:

(1) The amount of sales or use tax paid on the item to this State. Payment of sales or use tax to this State on an item by a retailer extinguishes the liability of a purchaser for the tax imposed under this section.

(2) The amount of sales or use tax paid on the item to another state. If the amount of tax paid to the other state is less than the amount of tax imposed by this section, the difference is payable to this State. The credit allowed by this subdivision does not apply to tax paid to a state that does not grant a similar credit for sales or use taxes paid in North Carolina."

SECTION 7. G.S. 105-164.7 reads as rewritten:

"**§ 105-164.7. Sales tax part of purchase price.**

Every retailer subject to the tax levied in G.S. 105-164.4 shall at the time of selling or delivering or taking an order for the sale or delivery of taxable tangible personal property or a taxable service, or collecting the sales price, add to the sales price the amount of tax due. The tax constitutes a part of the purchase price, is a debt from the purchaser to the retailer until paid, and is recoverable at law in the same manner as other debts. The tax must be stated and charged separately from the sales price, shown separately on the retailer's sales records, and paid by the purchaser to the retailer as trustee for and on account of the State. The retailer is liable for the collection of the tax and for its payment to the Secretary. The retailer's failure to charge the tax to or to collect the tax from the purchaser does not affect this liability. It is the intent of this Article that the tax be added to the sales price of tangible personal property and services when sold at retail and be borne and passed on to the customer, instead of being borne by the retailer."

SECTION 8.(a) G.S. 105-164.13(1a) reads as rewritten:

"(1a) Sales of the following to a farmer, as defined in subdivision (1) of this section:

a. A container ~~sold to a farmer, as defined in subdivision (1) of this section,~~ used for a purpose set out in ~~that~~ subdivision (1) of this section or in packaging and transporting the farmer's product for sale.

b. A grain, feed, or soybean storage facility, and parts and accessories attached to the facility."

SECTION 8.(b) G.S. 105-164.13(4e) is repealed.

SECTION 9. G.S. 105-164.14(k) reads as rewritten:

"(k) Reports. – The Department of Revenue shall publish by May 1 of each year the following information itemized by taxpayer for the 12-month period ending the preceding December 31:

(1) The number of taxpayers claiming a refund allowed in subsections (a1), (g), (h), (i), ~~and (j)~~(j), and (*l*) of this section.

(2) The total amount of purchases with respect to which refunds were claimed.

(3) The total cost to the General Fund of the refunds claimed."

SECTION 10. G.S. 105-164.15A reads as rewritten:

"**§ 105-164.15A. Effective date of rate changes for services.**

The effective date of a rate change for a service taxable under this Article is administered as follows:

(1) For a rate increase, the new rate applies to the first billing period that starts on or after the effective date. For a service billed after it is provided, the first billing period starts on the effective date. For a service billed before it is provided, the first billing period starts on the first day of the month after the effective date.

(2) For a rate decrease, the new rate applies to bills rendered on or after the effective date."

SECTION 11. G.S. 105-187.52 reads as rewritten:

"**§ 105-187.52. Administration.**

(a) Administration. – The privilege taxes imposed by this Article are in addition to the State use tax. Except as otherwise provided in this Article, the collection and administration of these taxes is the same as the State use tax imposed by Article 5 of this Chapter.

(b) Credit. – A credit is allowed against the tax imposed by this Article for the amount of a sales or use tax, privilege or excise tax, or substantially equivalent tax paid to another state. The credit allowed by this subsection does not apply to tax paid to another state that does not grant a similar credit for the privilege tax paid in North Carolina."

SECTION 12.(a) G.S. 105-233 and G.S. 105-234 are repealed.

SECTION 12.(b) G.S. 105-236 reads as rewritten:

"**§ 105-236. ~~Penalties.~~Penalties; situs of violations; penalty disposition.**

(a) Penalties. – ~~Penalties assessed by the Secretary under this Subchapter are assessed as an additional tax. The clear proceeds of any civil penalties levied pursuant to subdivisions (3), (4), (5)a., and (6) of this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Except as otherwise provided by law, and subject to the provisions of G.S. 105-237, the following penalties shall be applicable:~~The following civil penalties and criminal offenses apply:

(1) Penalty for Bad Checks. – When the bank upon which any uncertified check tendered to the Department of Revenue in payment of any obligation due to the Department returns the check because of insufficient funds or the nonexistence of an account of the drawer, the Secretary shall assess a penalty equal to ten percent (10%) of the check, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). This penalty does not apply if the Secretary finds that, when the check was presented for payment, the drawer of the check had sufficient funds in an account at a financial institution ~~in this State~~ to pay the check and, by inadvertence, the drawer of the check failed to draw the check on the account that had sufficient funds.

...

~~(11) Any violation of Subchapter I, V, or VIII of this Chapter or of Article 3 of Chapter 119 of the General Statutes is considered an act committed in part at the office of the Secretary in Raleigh. The certificate of the Secretary that a tax has not been paid, a return has not been filed, or information has not been supplied, as required by law, is prima facie evidence that the tax has not been paid, the return has not been filed, or the information has not been supplied.~~

(12) Repealed by Session Laws 1991, c. 45, s. 27.

(b) Situs. – Violation of a tax law is considered an act committed in part at the office of the Secretary in Raleigh. The certificate of the Secretary that a tax has not been paid, a return has not been filed, or information has not been supplied, as required by law, is prima facie evidence that the tax has not been paid, the return has not been filed, or the information has not been supplied.

(c) Penalty Disposition. – Civil penalties assessed by the Secretary are assessed as an additional tax. The clear proceeds of civil penalties assessed by the Secretary must be credited to the Civil Penalty and Forfeiture Fund, established in G.S. 115C-457.1."

SECTION 12.(c) G.S. 105-449.48 and G.S. 105-449.127 are repealed.

SECTION 12.(d) G.S. 105-449.49 reads as rewritten:

"**§ 105-449.49. Temporary permits.**

(a) Issuance. – Upon application to the Secretary and payment of a fee of fifty dollars ($50.00), a motor carrier may obtain a temporary permit authorizing the carrier to operate a vehicle in the State for three days without registering the vehicle in accordance with G.S. ~~105-449.47 for not more than three days.~~ 105-449.47. A motor carrier to whom a temporary permit has been issued may elect not to report its operation of the vehicle during the three-day period. Fees collected under this subsection are credited to the Highway Fund.

(b) Refusal. – The Secretary may refuse to issue a temporary permit to any of the following:

(1) A motor carrier whose registration has been withheld or revoked.

(2) A motor carrier who the Secretary determines is evading payment of tax through the successive purchase of temporary permits."

SECTION 13.(a) G.S. 105-449.65(b) reads as rewritten:

"(b) Multiple Activity. – A person who is engaged in more than one activity for which a license is required must have a separate license for each activity, unless this subsection provides otherwise. A person who is licensed as a supplier is considered to have a license as a distributor. A person who is licensed as an occasional importer or a tank wagon importer is not required to obtain a separate license as a distributor unless the importer is also purchasing motor fuel, at the terminal rack, from an elective or permissive supplier who is authorized to collect and remit the tax to the State. A person who is licensed as a distributor is not required to obtain a separate license as an importer if the distributor acquires fuel for import only from an elective supplier or a permissive supplier and is not required to obtain a separate license as an exporter. A person who is licensed as a distributor or a blender ~~is not required to obtain a separate license~~ and who transports fuel is considered to be licensed as a motor fuel ~~transporter if the distributor or blender does not transport motor fuel for others for hire.~~transporter."

SECTION 13.(b) G.S. 105-449.101 reads as rewritten:

"**§ 105-449.101. Motor fuel transporter to file informational return showing deliveries of ~~imported or exported~~ motor fuel.**

(a) Requirement. – A motor fuel transporter ~~that imports motor fuel into this State or exports motor fuel from this State~~ must file a monthly informational return with the Secretary that shows motor fuel ~~received or delivered for import or export~~

transported in this State by the transporter during the month. ~~This requirement does not apply to a distributor that is not required to be licensed as a motor fuel transporter.~~

(b) Content. – The return required by this section is due ~~by the 25th day of the month following the month covered by the return.~~ on the same date as a monthly return due under G.S. 105-449.90. The return must contain the following information and any other information required by the Secretary:

(1) The name and address of each person from whom the transporter received motor fuel outside the State for delivery in the State, the amount of motor fuel received, the date the motor fuel was received, and the destination state of the fuel.

(2) The name and address of each person from whom the transporter received motor fuel in the State for delivery outside the State, the amount of motor fuel delivered, the date the motor fuel was delivered, and the destination state of the fuel.

(3) The name and address of each person from whom the transporter received motor fuel in the State for delivery in the State, the amount of motor fuel received, the date the motor fuel was received, and the destination state of the fuel."

SECTION 14.(a) G.S. 105-449.60 is amended by adding a new subdivision to read:

"**§ 105-449.60. Definitions.**

The following definitions apply in this Article:

...

(10a) Exempt card or code. – A credit card or an access code that enables the person to whom the card or code is issued to buy motor fuel at retail without paying the motor fuel excise tax on the fuel."

SECTION 14.(b) G.S. 105-449.88A reads as rewritten:

"**§ 105-449.88A. Liability for tax due on motor fuel designated as exempt by the use of cards or codes.**

~~(a) Exempt Cards at Rack. When a licensed distributor or licensed importer removes motor fuel from a terminal by means of an exempt card or exempt access code issued by the supplier, the distributor or importer represents that the fuel removed will be resold to a governmental unit that is exempt from the tax. A supplier may rely on this representation. A licensed distributor or licensed importer that does not resell motor fuel removed from a terminal by means of an exempt card or exempt access code to an exempt governmental unit is liable for any tax due on the fuel.~~

(b) Exempt ~~Cards at Retail.~~ Card or Code. ~~An "exempt card or code" is a credit card or an access code that enables the person to whom the card or code is issued to buy motor fuel at retail without paying the motor fuel excise tax on the fuel.~~ An entity that issues an exempt card or code has a duty to determine if the person to whom it is issued is exempt from the motor fuel excise tax. An entity that issues an exempt card or code to a person who is not exempt from tax is liable for tax due on motor fuel the person purchases at retail by use of the exempt card or code. If a supplier authorizes another entity to issue an exempt card or code to a person who is not exempt from tax, the

supplier and the entity that issued the card are jointly and severally liable for tax due on motor fuel the person purchases at retail by use of the exempt card or code.

(c) Card Holder. – A person to whom an exempt card or ~~exempt access card~~ code is issued ~~for use at a terminal or at retail~~ is liable for any tax due on fuel purchased with the card or code for a purpose that is not exempt. A person who misuses an exempt card or code by purchasing fuel with the card or code for a purpose that is not exempt is liable for the tax due on the fuel."

SECTION 14.(c) G..S. 105-449.90(c) is repealed.

SECTION 14.(d) G.S. 105-449.93 reads as rewritten:

"**§ 105-449.93. ~~Exempt sale deduction and percentage~~ Percentage discount for licensed distributors and some licensed importers.**

~~(a) Deduction. – A license holder listed below may deduct from the amount of tax otherwise payable to a supplier the amount calculated on motor fuel the license holder received from the supplier and resold to a governmental unit whose purchases of motor fuel are exempt from the tax under G.S. 105-449.88 if, when removing the fuel, the license holder used an access card or code specified by the supplier to notify the supplier of the license holder's intent to resell the fuel in an exempt sale:~~

~~(1) A licensed distributor.~~

~~(2) A licensed importer that removed the motor fuel from a terminal rack of a permissive or an elective supplier.~~

(b) Percentage Discount. – A licensed distributor that pays the tax due a supplier by the date the supplier must pay the tax to the State may deduct from the amount due a discount of one percent (1%) of the amount of tax payable. A licensed importer that removes motor fuel from a terminal rack of a permissive or an elective supplier and that pays the tax due the supplier by the date the supplier must pay the tax to the State may deduct from the amount due a discount of the same amount allowed a licensed distributor. The discount covers the expense of furnishing a bond and losses due to shrinkage or evaporation. A supplier may not directly or indirectly deny this discount to a licensed distributor or licensed importer that pays the tax due the supplier by the date the supplier must pay the tax to the State."

SECTION 14.(e) G.S. 105-449.94 is repealed.

SECTION 14.(f) G.S. 105-449.97(d) reads as rewritten:

"(d) Taxes Paid on Exempt Retail Sales. – When filing a return, a supplier that issues or authorizes the issuance of an exempt card or ~~an exempt access~~ code to a person that enables the person to buy motor fuel ~~at retail~~ without paying tax on the fuel may deduct the amount of excise tax imposed on fuel purchased with the exempt ~~retail~~ card or code. The amount of excise tax imposed on fuel purchased ~~at retail~~ with an exempt ~~retail~~ card or code is the amount that was imposed on the fuel when it was delivered to the retailer of the fuel."

SECTION 14.(g) G.S. 105-449.105A(a) reads as rewritten:

"(a) Refund. – A distributor who sells kerosene to any of the following may obtain a refund for the excise tax the distributor paid on the kerosene, less the amount of any discount allowed on the kerosene under G.S. 105-449.93:

(1) The end user of the kerosene, if the distributor dispenses the kerosene into a storage facility of the end user that contains fuel used only for one of the following purposes and the storage facility is installed in a manner that makes use of the fuel for any other purpose improbable:
a. Heating.
b. Drying crops.
c. A manufacturing process.

(2) A retailer of kerosene, if the distributor dispenses the kerosene into a storage facility that meets both of the following conditions:
a. It is marked with the phrase "Undyed, Untaxed Kerosene, Nontaxable Use Only" or a similar phrase that clearly indicates that the fuel is not to be used to operate a highway vehicle.
b. It either has a dispensing device that is not suitable for use in fueling a highway vehicle or is kept locked by the retailer and must be unlocked by the retailer for each sale of kerosene.

(3) An airport, if the distributor dispenses the kerosene into a storage facility that contains fuel used only for fueling airplanes and that meets at least one of the following conditions:
a. It is marked with the phrase "Undyed, Untaxed Kerosene, Nontaxable Use Only" or a similar phrase that clearly indicates that the fuel is not to be used to operate a highway vehicle.
b. It has a dispensing device that is not suitable for use in fueling a highway vehicle."

SECTION 15.(a) G.S. 105-449.100 reads as rewritten:

"**§ 105-449.100. Terminal operator to file informational return showing changes in amount of motor fuel at the terminal.**

A terminal operator must file a monthly informational return with the Secretary that shows the amount of motor fuel received or removed from the terminal during the month. The return is due ~~by the 25th day of the month following the month covered by the return.~~ on the same date as a monthly return due under G.S. 105-449.90. The return must contain the following information and any other information required by the Secretary:

(1) The number of gallons of motor fuel received in inventory at the terminal during the month and each position holder for the fuel.
(2) The number of gallons of motor fuel removed from inventory at the terminal during the month and, for each removal, the position holder for the fuel and the destination state of the fuel.
(3) The number of gallons of motor fuel gained or lost at the terminal during the month."

SECTION 15.(b) G.S. 105-449.102(a) reads as rewritten:

"(a) Return. – A distributor that exports motor fuel from a bulk plant located in this State must file a monthly return with the Secretary that shows the exports. The return is due ~~by the 25th day of the month following the month covered by the return.~~

on the same date as a monthly return due under G.S. 105-449.90. The return serves as a claim for refund by the distributor for tax paid to this State on the exported motor fuel."

SECTION 15.(c) G.S. 105-449.137(b) reads as rewritten:

"(b) Payment. – The tax imposed by this Article is payable when a return is due. A return is due ~~monthly within 25 days after the end of each month.~~ on the same date as a monthly return due under G.S. 105-449.90. A monthly return covers liabilities that accrue in the calendar month preceding the date the return is due. A return must be filed with the Secretary and must be in the form and contain the information required by the Secretary."

SECTION 15.(d) G.S. 119-18(a) reads as rewritten:

"(a) Tax. – An inspection tax of one fourth of one cent (1/4 of 1¢) per gallon is levied upon all of the fuel listed in this subsection regardless of whether the fuel is exempt from the per-gallon excise tax imposed by Article 36C or 36D of Chapter 105 of the General Statutes. The inspection tax on motor fuel is due and payable to the Secretary of Revenue at the same time that the per gallon excise tax on motor fuel is due and payable under Article 36C of Chapter 105 of the General Statutes. The inspection tax on alternative fuel is due and payable to the Secretary of Revenue at the same time that the excise tax on alternative fuel is due and payable under Article 36D of Chapter 105 of the General Statutes. The inspection tax on kerosene is payable monthly to the Secretary by a supplier that is licensed under Part 2 of Article 36C of Chapter 105 of the General Statutes and by a kerosene supplier. A monthly report is due ~~by the 22nd of each month~~ on the same date as a monthly return due under G.S. 105-449.90 and applies to kerosene sold during the preceding month by a supplier licensed under that Part and to kerosene received during the preceding month by a kerosene supplier. A kerosene terminal operator must file a return in accordance with the provisions of ~~G.S. 105-449.100.~~G.S. 105-449.90.

(1) Motor fuel.

(2) Alternative fuel used to operate a highway vehicle.

(3) Kerosene."

SECTION 16.(a) G.S. 105-449.106(c) reads as rewritten:

"(c) Special Mobile Equipment. – A person who purchases and uses motor fuel to operate special mobile equipment off-highway may receive a quarterly refund, for the excise tax paid during the preceding quarter, at a rate equal to the flat cents-per-gallon rate plus the variable cents-per-gallon rate in effect during the quarter for which the refund is claimed, less the amount of sales and use tax or privilege tax due on the fuel under this Chapter, as determined in accordance with G.S. 105-449.107(c). An application for a refund must be made in accordance with this Part."

SECTION 16.(b) G.S. 105-449.107 reads as rewritten:

"**§ 105-449.107. Annual refunds for off-highway use and use by certain vehicles with power attachments.**

(a) Off-Highway. – A person who purchases and uses motor fuel for a purpose other than to operate a licensed highway vehicle may receive an annual refund for the excise tax the person paid on fuel used during the preceding calendar year. The amount of refund allowed is the amount of the flat cents-per-gallon rate in effect during the year

for which the refund is claimed plus the average of the two variable cents-per-gallon rates in effect during that year, less the amount of sales and use tax or privilege tax due on the fuel under this Chapter. An application for a refund allowed under this section must be made in accordance with this Part.

(b) Certain Vehicles. – A person who purchases and uses motor fuel in one of the vehicles listed below may receive an annual refund for the amount of fuel consumed by the vehicle:

(1) A concrete mixing vehicle.
(2) A solid waste compacting vehicle.
(3) A bulk feed vehicle that delivers feed to poultry or livestock and uses a power takeoff to unload the feed.
(4) A vehicle that delivers lime or fertilizer in bulk to farms and uses a power takeoff to unload the lime or fertilizer.
(5) A tank wagon that delivers alternative fuel, as defined in G.S. 105-449.130, or motor fuel or another type of liquid fuel into storage tanks and uses a power takeoff to make the delivery.
(6) A commercial vehicle that delivers and spreads mulch, soils, composts, sand, sawdust, and similar materials and that uses a power takeoff to unload, blow, and spread the materials.
(7) A commercial vehicle that uses a power takeoff to remove and dispose of septage and for which an annual fee is required to be paid to the Department of Environment and Natural Resources under G.S. 130A-291.1.
(8) A sweeper.

The amount of refund allowed is thirty-three and one-third percent (33 1/3%) of the following: the sum of the flat cents-per-gallon rate in effect during the year for which the refund is claimed and the average of the two variable cents-per-gallon rates in effect during that year, less the amount of sales and use tax or privilege tax due on the fuel under this Chapter. An application for a refund allowed under this section must be made in accordance with this Part. This refund is allowed for the amount of fuel consumed by the vehicle in its mixing, compacting, or unloading operations, as distinguished from propelling the vehicle, which amount is considered to be one-third of the amount of fuel consumed by the vehicle.

(c) Sales Tax Amount. – Article 5 of this Chapter determines the amount of sales and use tax to be deducted under this section from a motor fuel excise tax refund. Article 5F of this Chapter determines the amount of privilege tax to be deducted under this section from a motor fuel excise tax refund. The sales price and the cost price of motor fuel to be used in determining the amount to deduct is the average of the wholesale prices used under G.S. 105-449.80 to determine the excise tax rates in effect for the two six-month periods of the year for which the refund is claimed."

SECTION 17. G.S. 105-449.120(a)(3a) is repealed.

SECTION 18. The catch line of G.S. 105-249.2 reads as rewritten:

"§ 105-249.2. Due date extended and penalties waived for certain military personnel or ~~individuals~~ persons affected by a presidentially declared disaster."

SECTION 19. The catch line of G.S. 143B-437.71 reads as rewritten:

"§ 143B-437.71. One North Carolina Fund established as a ~~nonreverting account.~~special revenue fund."

SECTION 20.(a) G.S. 153A-155(d) reads as rewritten:

"(d) Administration. – The taxing county shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the county finance officer in monthly installments on or before the ~~15th~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 20th day of each month, prepare and render a return on a form prescribed by the taxing county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the county finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1."

SECTION 20.(b) G.S. 160A-215(d) reads as rewritten:

"(d) Administration. – The taxing city shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the city finance officer in monthly installments on or before the ~~15th~~ 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 20th day of each month, prepare and render a return on a form prescribed by the taxing city. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the city finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1."

SECTION 21. G.S. 160A-49(f2) reads as rewritten:

"(f2) Effective Date of Annexation for Certain Property. – Annexation of property subject to annexation under subsection (f1) of this section shall become effective:

(1) Upon the effective date of the annexation ordinance, the property is considered part of the city only (i) for the purpose of establishing city boundaries for additional annexations pursuant to this Article and (ii) for the exercise of city authority pursuant to Article 19 of this Chapter.

(2) For all other purposes, the annexation becomes effective as to each tract of such property or part thereof on the last day of the month in which that tract or part thereof becomes ineligible for classification pursuant to ~~G.S. 105-227.4~~ G.S. 105-277.4 or no longer meets the requirements of subdivision (f1)(2) of this section. Until annexation of a tract or a part of a tract becomes effective pursuant to this subdivision, the tract or part of a tract is not subject to taxation by the city under Article 12 of Chapter 105 of the General Statutes nor is the tract or part of a tract entitled to services provided by the city."

SECTION 22. The introductory language for Section 59.2 of S.L. 2005-435 reads as rewritten:

"**SECTION 59.2.(a)** ~~G.S. 105-114.1(a4)~~ G.S. 105-114(a4) reads as rewritten:".

SECTION 23. The introductory language of Section 4 of S.L. 2005-413 reads as rewritten:

"**SECTION 4.** ~~G.S. 105-129.15(7) reads~~ Subdivisions (6) and (7) of G.S. 105-129.15 read as rewritten:".

SECTION 24. Section 1(a) of S.L. 2005-261 reads as rewritten:

"**SECTION 1.(a)** Authority; Vote. – If the majority of those voting on the question pursuant to this section vote for the levy of the tax, the Monroe City Council may, by ordinance, levy a prepared food and beverages tax of up to one percent (1%) of the sales price of prepared food and beverages sold within the City of Monroe at retail for consumption on or off the premises by a retailer subject to sales tax under G.S. ~~105-164(a)(1).~~105-164.4(a)(1). This tax is in addition to State and local sales tax.

The Monroe City Council may direct the county board of elections to submit to the qualified voters of the city during any election held in 2006 the question of whether to levy a local prepared food and beverages tax of one percent (1%) as provided in this section. The election must be held on a date jointly agreed upon by the board of elections and city council and held in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

One percent (1%) local prepared food and beverages tax, in addition to the current local sales and use taxes, to be used for the Civic Center Project for the City of Monroe."

SECTION 25. Section 4 is effective for taxable years beginning on or after January 1, 2006. Sections 13, 14, 15, and 17 of this act become effective January 1, 2007, and apply to motor fuel purchased on or after that date. An exempt card or code will not be valid for sales of motor fuel at the terminal rack on or after January 1, 2007. The remainder of this act is effective when it becomes law.

HOUSE BILL 1963:
Revenue Laws Tech. & Motor Fuel Tax Changes

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 1, 2006
Introduced by:	Rep. Luebke	**Summary by:**	Martha Walston
Version:	H1963-CSLA-35		Committee Counsel

SUMMARY: House Bill 1963 makes several technical, clarifying, and administrative changes to the revenue laws and related statutes and to the motor fuel tax laws to improve collection and administration. Sections 1, 2, 7, 19, 21, 22, 23, and 24 are technical changes. Sections 3, 5, 6, 8, 12, and 18 are clarifying changes. Sections 4, 9, 10, 11, and 20 make administrative changes. Sections 13 through 17 are changes to the motor fuel tax laws designed to improve collection and administration efforts.

House Bill 1963 is a recommendation of the Revenue Laws Study Committee. Senate Bill 1453, introduced by Senate Hartsell, is a companion bill.

Changes made by the proposed committee substitute are in bold type below:

BILL ANALYSIS: This bill makes the following changes:

Section	Explanation
1	Corrects a departmental reference since S.L. 2005-380 transferred the NC Grape Growers Council from the Department of Agriculture and Consumer Services to the Department of Commerce.
2	Removes obsolete language and makes other stylistic changes. This statutory subsection makes two obsolete references to including the appraised value of intangible property in the appraised value base. This language became obsolete with the repeal of the intangibles tax effective for tax years beginning on or after January 1, 1995. The Department of Revenue does not require intangible property to be included in the appraised value base.
3(a) & (b)	Defines the term "gross income" in the corporate income tax law by reference to section 61 of the Code, which is the same definition that is currently found in the individual income tax law. Section 20(b) is a conforming change.
4	Section 4 relates to the new film incentives tax credit enacted last year. Subsections (a) and (b) make clarifying changes to the film incentives in both the corporate and individual provisions. First, the term "highly compensated individual" is limited to individuals who are compensated for services and does not include individuals who may sell goods in excess of the one-million-dollar limitation. Second, the exclusion of amounts paid to highly compensated individuals is clarified so that it is clear that the exclusion applies whether the individual is paid directly by the production or by an unrelated third-party. It is not uncommon for a production company to contract with a separate entity for the services of actors or other professionals involved in a production. Third, the statutes are amended so that withholdings must be remitted in order for compensation to qualify as a qualifying expense, but that withholding does not necessarily have to be performed by the production company. **The proposed committee substitute amends the definition of "highly compensated individual" by**

	adding the requirement the individual receive, directly or indirectly, compensation in respect to a single production, for personal services. The purpose of this change is to clarify that the term "highly compensated individual" is designed to cover actors who receive compensation either directly from the production company or through a third party such as an employee leasing company or a personal service company. It would not include an individual who receives $1 million in compensation for goods or other types of services. The proposed committee substitute also removes the requirement that the production company be the one to withhold tax from compensation in order for payments of compensation and wages to be eligible as a "qualifying expense". This change is intended to clarify that wages and compensation, other than amounts paid to a highly compensated individual, are a qualifying expense even though the production company is not the entity making payment directly to the individual or withholding taxes. Subsection (c) makes two changes to the confidentiality statute, one of which is related to the film incentives tax credit. It adds a new subdivision (36), which allows the Department of Revenue to provide to a production company claiming a film production credit information used by the Department to adjust the amount of the credit claimed by the production company. It also repeals subdivision (32), which allows the Department of Revenue to provide to Department of Public Instruction and the Fiscal Research Division reports regarding sales and use tax refunds received by school administrative units. This provision was enacted last year. However, Section 32(b) of S.L. 2005-435 amended the definition of tax information to exclude governmental agency refunds. Therefore, an exception is not needed in the confidentiality statute since the information is no longer confidential tax information.
5(a) & (b)	In 2005, the General Assembly made the use tax applicable to services sourced to this State. Section 21(a) is a conforming change which amends the definition of "use" to include services. Section 21(b) is a conforming change to the statute regarding use tax returns.
6	Corrects an inadvertent omission. In last year's budget bill, there was a rewrite of this statutory section on use tax. A credit should be allowed for both sales and use tax paid to another state, but the revised statute only provides a credit for sales tax paid. There was no intent to change the application of the tax and so, this section adds the phrase "or use" back into the statute.
7	Makes a grammatical change to the statute.
8(a) & (b)	Clarifies that the exemption from sales tax for sales of grain, feed, or soybean storage facilities and accessories only applies to sales made to farmers. This was one of the items previously subject to the 1%, $80 maximum rate of tax. The 1% rate was imposed on sales to farmers of grain, feed, or soybean storage facilities and accessories. Last year, to conform to the Streamlined Agreement, the General Assembly exempted these items from sales tax. However, the new exemption language did not limit the exemption to farmers.
9	Last year, a sales and use tax refund was authorized for the purchase of fuel by interstate passenger air carriers and by motorsports racing team or sanctioning body. Under

	current law, the Department of Revenue is required annually to publish the number of taxpayers claiming certain sales and use tax refunds. This section would add these categories of refunds to the reporting requirement.
10	Clarifies the effective date for a rate increase with regard to prepayments of service. In 2005, the General Assembly enacted G.S. 105-164.15A, which addresses the effective date for rate increases and decreases to taxable services, but the statute does not specifically address prepayments of service.
11	Provides a credit against the privilege tax for sales and use tax, or a similar type of tax, paid to another state. Currently, there is no specific provision for credits in the newly enacted Article 5F.
12	Section 12 makes changes to various penalty statutes. Section 12(a) repeals two misdemeanor statutes relating to the willful failure to comply with the tax laws and aiding and abetting in the violation of the tax laws. These violations are covered by G.S. 105-236(9) and therefore are unnecessary. Section 12(b) reorganizes the penalties statute and makes some technical and clarifying changes. It divides the former statutory section into three subsections: subsection (a) lists the various penalties available to the Department of Revenue for violations of the tax laws; subsection (b) is a recodification of the principle previously set out in subdivision (11), which states that a violation of a tax law is considered an act committed in part at the office of the Secretary in Raleigh; and subsection (c) restates language previously found at the beginning of the statute directing the disposition of the penalty proceeds to the Civil Penalty and Forfeiture Fund. This subsection also deletes an obsolete requirement to avoid the penalty for a bad check, which states that a person had sufficient funds in a bank account "in this State." Since the Department does not follow this requirement, it is being deleted. Section 12(c) repeals G.S. 105-449.127, which provides that civil penalties assessed for violation of the motor fuels tax laws be credited to the Highway Fund. G.S. 105-449.48 provides that fees collected for the issuance of temporary permits for motor carriers and all civil penalties collected for violations of the motor carrier laws be credited to the Highway Fund. Section 12(d) repeals this statute and moves the fee disposition language to G.S. 105-449.49. The repeal of these two statutes redirects from the Highway Fund to the Civil Penalty and Forfeiture Fund civil penalty proceeds collected under these two articles as required by *North Carolina School Boards Assn. v. Moore*. In July of 2005, the North Carolina Supreme Court held in *North Carolina School Boards Assn. v. Moore* that the penalties assessed under Chapter 105 are imposed as a monetary payment for a taxpayer's noncompliance with a mandate of the Revenue Act, that they are punitive in nature, and, as such, they are subject to Article IX, Section 7 of the NC Constitution requiring those funds be remitted to the Civil Penalty and Forfeiture Fund for use by the schools.
13(a) & (b)	Section 13 would give the Department the ability to cross match all motor fuel to ensure compliance with the motor fuel tax laws. Under current law, the Department may cross-match information regarding fuel entering the State and fuel leaving the State, but it

	cannot cross-match information regarding the intrastate movement of motor fuel. The Department has a new fuel tracking system that will better enable it to monitor the movement of fuel. The Department expects the system to be operational by the last quarter of this fiscal year. Section 13 makes the statutory changes necessary to enable the Department to review intrastate movements of fuel by providing that anyone who transports fuel must be licensed as a transporter and that all transporters must file informational returns on all movements of motor fuel. Section 13(a) provides that all people who transport motor fuel will be licensed as a motor fuel transporter. Under current law, a person licensed as a distributor or blender is considered to be licensed as a motor fuel transporter if the person transports the fuel for others for hire. This section would remove the exception for persons who transport their own fuel so that any distributor or blender who transports fuel – whether for hire or for their own use – would also be considered licensed as a transporter. Section 13(b) provides that a transporter must file an informational return showing deliveries of motor fuel. Under current law, only interstate movements of fuel must be reported on a monthly informational return. The change in this section of the bill would require such a return for all deliveries of fuel **The proposed committee substitute moves the effective date of Section 13(b) from January 1, 2007 to July 1, 2007**
14	Section 14 would provide that all motor fuel leaving the terminal rack would be subject to the motor fuel excise tax. The Department requested this change to reduce the areas of evasion and inadvertent duplicate refunds. Under current law, a licensed distributor or importer may remove fuel from a terminal without paying the tax if the person has an exempt card issued by the supplier. This section would remove the ability of distributors and importers to use exempt cards at the terminal rack. Instead, they would be able to obtain a monthly refund on any sales of fuel to exempt entities.[1] This change would conform North Carolina's law to the laws of the surrounding states who do not allow untaxed gasoline or undyed fuel to leave their terminals without the imposition of the tax. Section 14(a) puts the definition of 'exempt card or code' in the definitional statute for the motor fuel article. Section 14(b) repeals the portion of the statute that allows fuel to be removed from the terminal without paying the tax. Section 14(c) repeals the requirement of a quarterly return **and makes conforming changes.** Section 14(d) removes the deduction a licensed distributor or importer may make for tax exempt fuel taken from the terminal rack because the ability to obtain the fuel without paying the tax is repealed in section 14(b). Section 14(e) repeals the statute requiring a licensed distributor or importer who obtains fuel at the terminal rack with an exempt card to file a quarterly reconciling return. Section 14(f) makes conforming changes. Section 14(g) provides a monthly refund procedure for a distributor who sells diesel fuel to an airport. A refund procedure already exists for sales of motor fuel to the other listed exempt entities.
15	Section 15 would establish a common due date for all motor fuel tax due and informational returns. Under current law, most of the monthly tax returns are due on the

[1] G.S. 105-449.88 exempts the following entities from the motor fuel excise tax if it is sold to them for their use: the federal government, the State, local boards of education, charter schools, community colleges, counties, municipalities, and airports.

	22nd day of the month following the month covered by the return. Informational returns are due on the 25th day of the month following the month covered by the return. These sections provide that all monthly returns are due on the 22nd day of the month following the month covered by the return.
16	Adds a reference to the privilege tax imposed under Article 5F, which was enacted last year, with regard to refunds of motor fuels tax allowed for nonhighway use of a vehicle. A refund of motor fuels tax allowed for the nonhighway use of a vehicle is to be reduced by the amount of sales and use tax owed based on the method set out in G.S. 105-449.107. Prior to January 1, 2006, the amount of sales tax due was based on either the general State and local rates of tax or the 1% rate imposed on sales of fuel to farmers and manufacturers. Effective January 1, 2006, sales of fuel to farmers and manufacturers are subject to the new 1% privilege tax. Currently, these two statutes refer only to the sales and use taxes levied in Article 5.
17	Section 17 would remove the misdemeanor for taxpayers failing to pay the destination state taxes collected to that state. This provision was put into the law when North Carolina first moved to tax-at-the-rack. Today, all of the surrounding states have destination state tax laws. North Carolina does not collect and remit the taxes to those states, therefore this misdemeanor is no longer needed.
18	Amends the caption of G.S. 105-249.2 by replacing the word "individuals" with the word "persons." This statute provides, in part, that no penalties may be assessed for any period in which the time for filing a federal return or for paying a federal tax is extended because of a presidentially declared disaster. The relief provided by this statute is applied by the Department of Revenue equally to all tax entities, including businesses, and not just individuals.
19	Amends the caption of the statute to reflect what the statute actually provides. G.S. 143B-437.71(a) states, "The One North Carolina Fund is established as a special revenue fund in the Department of Commerce."
20	Section 20(a) and (b) conform the date an occupancy tax return is due to the date that the occupancy taxes are due.
21	Corrects an incorrect statutory reference.
22	Corrects an incorrect statutory reference.
23	Corrects introductory language from a 2005 session law.
24	Corrects an incorrect statutory reference within a local session law.

EFFECTIVE DATE: Section 4 is effective for taxable years beginning on or after January 1, 2006. Sections 13 of the act becomes effective July 1, 2007, and applies to motor fuel transported on or after that date. Sections 14, 15, and 17 of this act become effective January 1, 2007, and apply to motor fuel purchased on or after that date. An exempt card or code will not be valid for sales of motor fuel at the terminal rack on or after January 1, 2007. The remainder of this act is effective when it becomes law.

Trina Griffin and Cindy Avrette, committee counsel, substantially contributed to this summary.

H1963e1-SMLA

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 1963 (First Edition)

SHORT TITLE: Revenue Laws Tech. & Motor Fuel Tax Changes.

SPONSOR(S): Representative Luebke

FISCAL IMPACT

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

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES:	**Small potential gain due to improved compliance**				
EXPENDITURES:					
POSITIONS (cumulative):					

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

EFFECTIVE DATE: Section 4 is effective for taxable years beginning on or after January 1, 2006. Sections 13, 14, 15, and 17 become effective January 1, 2007, and apply to motor fuel purchased on or after that date. An exempt card or code will not be valid for sales or motor fuel at the terminal rack (Section 14) after January 1, 2007.

BILL SUMMARY: The legislation makes numerous technical and clarifying changes to the State's tax laws. It is a recommendation of the Revenue Laws Study Committee.

ASSUMPTIONS AND METHODOLOGY: The bill makes several changes to the State's tax laws, most of which are technical in nature. There are also several changes to the North Carolina motor fuels tax laws which are designed to improve collection and administration of that tax.

Sections 1, 2, 7, 19, 21, 22, 23, and 24 make purely technical changes and have no revenue impact.

Sections 3, 5, 6, 8, 12, and 18 are designed to clarify existing tax laws. Section 3 defines "gross income" in the corporate income tax law by referencing section 61 of the Internal Revenue Code, which is the same definition for individual income tax law. No revenue impact is expected as a

result of this change. Section 5 conforms the base references for "use tax" to those used for "sales tax". This reflects current practice and is not expected to impact state revenues. Section 6 makes a similar change to clarify that the credit allowed for sales taxes paid in other states also applies to use taxes paid in other states. The change reflects current Department practice. No revenue impact is expected. Section 8 clarifies that the sales tax exemption granted for grain, feed, or soybean storage facilities and accessories only applies to farmers. Because this treatment was assumed in previous fiscal notes, no fiscal impact is expected as a result of this change. Section 12 makes several changes to the penalty statutes as they relate to the North Carolina Department of Revenue. Section 12(a) repeals two misdemeanor statutes that are covered in other areas of the law and are therefore unnecessary. Section 12(b) reorganizes the Revenue penalty statutes and deletes obsolete language. Sections 12(c) and 12(d) make changes to conform existing statutes to the requirement of North Carolina School Boards Association v. Moore, otherwise known as the fines and forfeiture case. Section 18 replaces the term "individuals" with the term "persons" in G.S. 105-249.2, which effectively extends the penalty relief given to individuals in times of a presidentially declared disaster to businesses.

Sections 4, 9, 10, 11, 13, 14, 15, 16, 17, and 20 make more substantive changes to the State's tax laws.

Section 4 addresses the newly enacted film incentive tax credit and the State's confidentiality laws. First, it clarifies that only payments for services, not goods, be considered when determining who is a highly compensated individual for purposes of the credit. It also clarifies that the amount of compensation to be included in the determination of "highly compensated individual" includes compensation paid through an unrelated third party. This section also allows the Department of Revenue to provide a production company that is claiming the credit tax information from a third party, but only if that information was used to adjust the amount of credit claimed by the production company. Finally, it allows the Department of Revenue to provide information to the Department of Public Instruction and the Fiscal Research Division of the General Assembly concerning sales and use tax refunds received by School Administrative Units. This provision was actually approved during the 2005 session, but was inadvertently repealed by a reference in subsequent legislation. No fiscal impact is expected as a result of any of these changes.

Section 9 modifies the Department of Revenue's reporting requirements as they relate to sales and use tax refunds. In the 2005 session new refunds were authorized for interstate passenger air carriers and Motorsports racing teams. This provision would include these two categories of taxpayers in the list of those whose total refund information is to be made public. This only requires that the total number of taxpayers and the amount of total refunds claimed be made public and does not require or allow individual taxpayer information to be released. As this change relates only to reporting, no fiscal impact is expected.

Section 10 clarifies the effective date of a sales and use tax rate increase as it relates to the prepayment of taxes. This change follows Department practice. Thus no revenue impact is expected.

Section 11 deals with the newly enacted 5F privilege tax on manufacturing equipment. Previously these items were taxed under the sales and use tax statutes, which allowed a credit for taxes paid in other states. This section extends that treatment to the new 5F privilege tax. Because this tax treatment was assumed in the estimate for enacting the new privilege tax, no fiscal impact is expected as a result of this change.

Sections 13, 14, 15, 16 and 17 make changes to North Carolina motor fuels laws. Section 13 authorizes the Department of Revenue to cross match all motor fuel data to ensure compliance with motor fuels tax laws. Currently the Department can only use information on the movement of fuel in and out of the state, but not within the state. Section 12(a) requires that all individuals that transport motor fuel be licensed as a motor fuel transporter. The change effectively removes an exemption for those that transport their own fuel, so that any distributor or blender would also be considered a licensed transporter. Section 13(b) requires that a transporter file an informational return showing all deliveries of motor fuel. Current law only requires reporting of interstate fuel transportation. Section 14 dictates that all motor fuel leaving the terminal rack is subject to the tax. Currently a licensed distributor can remove fuel without paying the tax if they have an exemption card issued by the supplier. The legislation would replace this exemption with a State issued monthly refund. This conforms North Carolina's laws in this area to those of the surrounding states. Section 15 provides for a common due date for all motor fuels tax returns, whether or not tax is due. Section 16 conforms special treatment of Article 5F purchases under the motor fuels tax statutes to that used in the sales and use tax statutes, with regards to the refund of motor fuels taxes. Section 17 removes an obsolete reference in the motor fuels laws. These changes, in total, are expected to improve compliance with North Carolina's motor fuels laws. However, no fiscal estimate is possible on this portion of the bill.

Section 20 clarifies that the due date for an occupancy tax return is the same as the due date for the associated taxes. Because the state does not levy an occupancy tax, no State fiscal impact is anticipated. The change could improve compliance with local occupancy tax laws.

SOURCES OF DATA: North Carolina Department of Revenue

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Linda Struyk Millsaps

"(a) Amount. – The Secretary must distribute ~~to the cities~~ part of the taxes imposed by G.S. 105-164.4(a)(4c) on telecommunications service. The Secretary must make the distribution within 75 days after the end of each calendar quarter. The amount the Secretary must distribute is ~~eighteen and three one-hundredths percent (18.03%)~~ the following percentages of the net proceeds of the taxes collected during the ~~quarter,~~ quarter:

(1) Eighteen and three one-hundredths percent (18.03%), minus two million six hundred twenty thousand nine hundred forty-eight dollars ~~($2,620,948).~~($2,620,948), must be distributed to cities in accordance with this section. ~~This~~ The deduction is one-fourth of the annual amount by which the distribution to cities of the gross receipts franchise tax on telephone companies, imposed by former G.S. 105-20, was required to be reduced beginning in fiscal year 1995-96 as a result of the "freeze deduction." ~~The Secretary must distribute the specified percentage of the proceeds, less the "freeze deduction" among the cities in accordance with this section.~~

(2) Seven and twenty-three one-hundredths percent (7.23%) must be distributed to counties and cities as provided in G.S. 105-164.44I."

SECTION 8. Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-164.44I. Distribution of part of sales tax on video programming service and telecommunications service to counties and cities.**

(a) Distribution. – The Secretary must distribute to the counties and cities part of the taxes imposed by G.S. 105-164.4(a)(4c) on telecommunications service and G.S. 105-164.4(a)(6) on video programming service. The Secretary must make the distribution within 75 days after the end of each calendar quarter. The amount the Secretary must distribute is the sum of the following:

(1) The amount specified in G.S. 105-164.44F(a)(2).

(2) Twenty-two and sixty-one one-hundredths percent (22.61%) of the net proceeds of the taxes collected during the quarter on video programming, other than on direct-to-home satellite service.

(3) Thirty-seven percent (37%) of the net proceeds of the taxes collected during the quarter on direct-to-home satellite service.

(b) Supplemental PEG Support. – The Secretary must include the applicable amount of supplemental PEG channel support in each quarterly distribution to a county or city. The amount to include is one-fourth of sixteen thousand dollars ($16,000) for each qualifying PEG channel operated by the county or city. The amount of money distributed under this subsection may not exceed two million dollars ($2,000,000) in a calendar year. If the amount to be distributed for qualifying PEG channels in a calendar year would otherwise exceed this maximum amount, the Secretary must proportionately reduce the applicable amount distributable for each PEG channel. The amount included under this subsection in a distribution to a county or city is intended to supplement the PEG channel support available in the amount distributed under this section.

A county or city must certify to the Secretary by January 15 of each year the number of qualifying PEG channels it operates. A qualifying PEG channel is one that meets the programming requirements under G.S. 66-357(d). A county or city may not receive PEG channel support for more than three qualifying PEG channels.

The money distributed to a county or city under this subsection must be used by it for the operation and support of PEG channels. For purposes of this subsection, the term "PEG channel" has the same meaning as in G.S. 66-350.

(c) Counties and Cities Without Local Cable Revenue. – The share of a county that did not impose a cable franchise tax under G.S. 153A-154 before January 1, 2007, is one dollar ($1.00) times the most recent annual population estimate for that county. The share of a city that did not impose a cable franchise tax under G.S. 160A-214 before January 1, 2007, is two dollars ($2.00) times the most recent annual population estimate for that city.

(d) Counties and Cities With Local Cable Revenue. – The share of a county or city that imposed a cable franchise tax under either G.S. 153A-154 or G.S. 160A-214 before January 1, 2007, is its proportionate share of the amount to be distributed to all counties and to all cities eligible to receive a distribution under this subsection. The amount to be distributed under this subsection is the amount determined under subsection (a) of this section, minus the amount distributed under subsections (b) and (c) of this section. A county's and city's proportionate share is the amount of cable franchise tax it received under G.S. 153A-154 or G.S. 160A-214 during the 2005-2006 fiscal year plus the amount of a subscriber fee imposed during the 2005-2006 fiscal year compared to the amount of cable franchise tax revenue and subscriber fee revenue all counties and cities received in that fiscal year. Each county or city that imposed a franchise tax under G.S. 153A-154 or G.S. 160A-214 must certify to the Secretary by January 15, 2007, the amount of cable franchise tax revenue and subscriber fee revenue it received in the 2005-2006 fiscal year.

For subsequent fiscal years, the Secretary must multiply the amount of a county's or city's share under this subsection for the preceding year by the percentage change in its population for that fiscal year and add the result to the county's or city's share for the preceding fiscal year to obtain the county's or city's adjusted amount. Each county's or city's proportionate share for that year is its adjusted amount compared to the sum of the adjusted amounts for all counties and cities.

(e) Population Determination. – In making population determinations under this section, the Secretary must use the most recent annual population estimates certified to the Secretary by the State Budget Officer. For purposes of the distributions made under this section, the population of a county is the population of its unincorporated areas plus the population of an ineligible city in the county, as determined under subsection (g) of this section.

(f) Change in City Structure. – The following changes apply when a city alters its corporate structure:

(1) If a city dissolves and is no longer incorporated, the proportional shares of the remaining counties and cities must be recalculated to adjust for the dissolution of that city.

(2) If two or more cities merge or otherwise consolidate, their proportional shares are combined.

(3) If a city divides into two or more cities, the proportional share of the city that divides is allocated among the new cities on a per capita basis.

(g) Ineligible Cities. – An ineligible city is disregarded for all purposes under this section. A city incorporated on or after January 1, 2000, is not eligible for a distribution under this section unless it meets both of the following requirements:

(1) It is eligible to receive funds under G.S. 136-41.2.

(2) A majority of the mileage of its streets is open to the public.

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

SECTION 9. G.S. 105-164.21B is repealed.

SECTION 10. G.S. 153A-137 is repealed.

SECTION 11. G.S. 153A-154 is repealed.

SECTION 12. G.S. 160A-211 reads as rewritten:

"**§ 160A-211. Privilege license taxes.**

(a) Authority. – Except as otherwise provided by law, a city shall have power to levy privilege license taxes on all trades, occupations, professions, businesses, and franchises carried on within the city. A city may levy privilege license taxes on the businesses that were formerly taxed by the State under the following sections of Article 2 of Chapter 105 of the General Statutes only to the extent the sections authorized cities to tax the businesses before the sections were repealed:

G.S. 105-36	Amusements – Manufacturing, selling, leasing, or distributing moving picture films.
G.S. 105-36.1	Amusements – Outdoor theatres.
G.S. 105-37	Amusements – Moving pictures – Admission.
G.S. 105-42	Private detectives and investigators.
G.S. 105-45	Collecting agencies.
G.S. 105-46	Undertakers and retail dealers in coffins.
G.S. 105-50	Pawnbrokers.
G.S. 105-51.1	Alarm systems.
G.S. 105-53	Peddlers, itinerant merchants, and specialty market operators.
G.S. 105-54	Contractors and construction companies.
G.S. 105-55	Installing elevators and automatic sprinkler systems.
G.S. 105-61	Hotels, motels, tourist courts and tourist homes.
G.S. 105-62	Restaurants.
G.S. 105-65	Music machines.
G.S. 105-65.1	Merchandising dispensers and weighing machines.
G.S. 105-66.1	Electronic video games.
G.S. 105-74	Pressing clubs, dry cleaning plants, and hat blockers.

G.S. 105-77	Tobacco warehouses.
G.S. 105-80	Firearms dealers and dealers in other weapons.
G.S. 105-85	Laundries.
G.S. 105-86	Outdoor advertising.
G.S. 105-89	Automobiles, wholesale supply dealers, and service stations.
G.S. 105-89.1	Motorcycle dealers.
G.S. 105-90	Emigrant and employment agents.
G.S. 105-91	Plumbers, heating contractors, and electricians.
G.S. 105-97	Manufacturers of ice cream.
G.S. 105-98	Branch or chain stores.
G.S. 105-99	Wholesale distributors of motor fuels.
G.S. 105-102.1	Certain cooperative associations.
G.S. 105-102.5	General business license.

(b) Barbershop and Salon Restriction. – A privilege license tax levied by a city on a barbershop or a beauty salon may not exceed two dollars and fifty cents ($2.50) for each barber, manicurist, cosmetologist, beautician, or other operator employed in the barbershop or beauty salon.

(c) ~~Piped Gas Restriction.~~ Prohibition.– A city may not ~~levy a privilege license tax on a person who is engaged in the business of supplying piped natural gas and is subject to tax under Article 5E of Chapter 105 of the General Statutes.~~ impose a license, franchise, or privilege tax on a person engaged in any of the businesses listed in this subsection. These businesses are subject to a State tax for which the city receives a share of the tax revenue.

(1) Supplying piped natural gas taxed under Article 5E of Chapter 105 of the General Statutes.

(2) Providing telecommunications service taxed under G.S. 105-164.4(a)(4c).

(3) Providing video programming taxed under G.S. 105-164.4(a)(6).

~~(d) Telecommunications Restriction. A city may not impose a license, franchise, or privilege tax on a company taxed under G.S. 105-164.4(a)(4c).~~"

SECTION 13. G.S. 160A-214 is repealed.

SECTION 14. G.S. 160A-319(a) reads as rewritten:

"(a) A city shall have authority to grant upon reasonable terms franchises for ~~the operation within the city of~~ a telephone system and any of the enterprises listed in ~~G.S. 160A-311 and for the operation of telephone systems.~~ G.S. 160A-311, except a cable television system. A franchise granted by a city authorizes the operation of the franchised activity within the city. No franchise shall be granted for a period of more than 60 years, except that a franchise for solid waste collection or disposal systems and facilities shall not be granted for a period of more than 30 ~~years and cable television franchises shall not be granted for a period of more than 20~~ years. Except as otherwise provided by law, when a city operates an enterprise, or upon granting a franchise, a city may by ordinance make it unlawful to operate an enterprise without a franchise."

SECTION 15. An award of a State-issued franchise under Article 42 of Chapter 66 of the General Statutes, as enacted by this act, does not affect a determination of whether video programming provided by the holder of the franchise is considered cable service provided over a cable system under federal law or under a state law that applies substantially the same definitions of "cable service" and "cable system" as federal law.

SECTION 16. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 17. The Revenue Laws Study Committee must review the effect Article 42 of Chapter 66, as enacted by this act, has on the following to determine if any changes to the law are needed and must report its findings to the 2009 Session of the North Carolina General Assembly:

(1) Competition in video programming services.

(2) The number of cable service subscribers, the price of cable service by service tier, and the technology used to deliver the service.

(3) The deployment of broadband in the State.

SECTION 18. This act becomes effective January 1, 2007. Sections 7 and 8 of this act apply to the distribution made within 75 days after March 31, 2007, for the quarter starting January 1, 2007.

HB 2047 (PCS): VIDEO SERVICE COMPETITION ACT

June 1, 2006

Executive Summary for the House Finance Meeting

- **Provides equal taxation of same service**
  - Defines video programming to include all programming comparable to television broadcast, regardless of provider
  - Repeals local authority to impose local franchise tax
  - Applies existing 7% State sales tax to video programming service
- **Promotes competition in video programming service**
  - Requires State franchising of cable service providers
  - Repeals local authority to award or renew a local cable franchise, effective January 1, 2007
- **Preserves local government revenue stream**
  - Distributes share of sales tax imposed on video programming to counties and cities
  - Distribution of video programming revenues based on the amount of cable franchise tax imposed during the first six months of fiscal year 06-07 PLUS any subscriber revenues imposed during the first six months of fiscal year 06-07. Subsequent annual distributions adjusted for population growth
- **Protects PEG Channels**
  - Provides $2 million for additional PEG support through direct distribution and through grants
  - Includes per subscriber revenue in local government distribution base and requires local governments that imposed a subscriber fee to use the amount of revenue derived from that fee for PEG channel operation and support
  - Sets number, service tier placement, and transmission quality of PEG channels
  - Provides mechanism to acquire additional PEG channels
  - Provides equipment assistance for transmitting PEG channel signals
- **Requires cable service provider to provide free basic service to local public buildings**
- **Preserves local regulation of rights-of-way**
- **Provides competitive neutrality**
  - Existing local franchises cannot be renewed
  - Opt out provision for cable service providers under existing local agreements when one or more households in the franchise area may be served by both the existing provider and the holder of a State-issued franchise
- **Prohibits discrimination**
  - Bill specifically prohibits discrimination of service based on income or race
  - Violation of the law declared an unfair or deceptive trade practice
- **Preserves service standards**
  - Franchisee must comply with customer service standards and emergency alert requirements of FCC
  - Consumer Protection Division of the Attorney General's Office will receive and respond to complaints

HOUSE BILL 2047:
Video Service Competition Act

BILL ANALYSIS

Committee:	House Finance	**Date:**	May 29, 2006
Introduced by:	Reps. Carney, Luebke, McComas, Wainwright	**Summary by:**	Cindy Avrette Committee Counsel
Version:	PCS to First Edition H2047-CSRB		

SUMMARY: House Bill 2047 would provide equal taxation of video programming services regardless of how the service is delivered and it would replace locally negotiated franchises of cable service provided over a cable system with a State-issued franchise. The PCS for the bill addresses various issues and concerns raised by parties interested in the bill. The bill would become effective January 1, 2007.

CURRENT LAW: North Carolina began taxing communication services when the technologies enabling the services were separate and distinct technologies and the providers of the services were separate and distinct taxpayers. Over the past several years, the technology used to provide these services has converged so that the line between the services is no longer separate and distinct. The Current Operations and Capital Improvements Appropriations Act of 2005 directed the Revenue Laws Study Committee to study the equity of taxation of providers of cable service, direct-to-home satellite service, satellite digital audio radio service, video programming service, and data service.

The Revenue Laws Study Committee spent a considerable amount of time on this issue.[1] The Committee found that the State taxes these services based upon who provides the service rather than the service itself. Despite the General Assembly's repeated attempts to provide tax equity among these providers, it is debatable whether that has been accomplished:

- The State imposes a 7% State sales tax on telecommunication services and it earmarks a percentage of the revenues to cities. The amount each city receives is based upon a per capita statutory formula. State law prohibits counties and cities from imposing local taxes on this service.
- The State imposes a 7% State sales tax on direct-to-home satellite service. Federal law prohibits a local tax on this service and it prohibits local regulation of this service. The tax revenue is not shared with local governments.
- The State imposes a 4.5% State sales tax and a 2.5% local sales tax on digital audio radio service.
- The State imposes a 7% State sales tax on cable services, with a credit equal to the amount of local franchise tax paid on the service. Counties and cities may impose a local franchise tax on this service; the tax may not exceed 5% of gross receipts. Cable service has been subject to local regulation since 1973. The local regulation of cable services varies from county to county and from city to city, depending on the terms of the locally negotiated agreements. The definition of

[1] The Revenue Laws Study Committee staff met separately with representatives of the cable industry, the telephone industry, the cable administrators, and the counties and cities. It also held a series of four meetings with the all the affected parties and solicited comments from the parties on numerous occasions. The staff prepared a survey given to all the local governments in the State to determine their franchise fee collections and other nonmonetary contributions received in accordance with their cable franchise agreements.

'gross receipts' may also vary from agreement to agreement. The cable boxes rented to customers is subject to the State and local sales tax. The gross receipts from the rental of these boxes may also be included in the company's gross receipts for local franchise tax purposes, depending upon how the term is defined in the local agreement.

The Revenue Laws Study Committee acknowledged that the method of taxation should not provide one provider of a service with a competitive advantage over another. The Committee expressed a goal to establish a method of taxation that applies equally to the same service, regardless of who provides it. The Committee established the following principles:

- Equal taxation of the same service.
- A tax system that is easy to administer.
- A tax and regulatory system that does not impede competition.
- Equal compensation to cities for the use of their public rights-of-way.
- PEG channels service a public purpose and should be supported.

Based upon those principles, it desired a bill that met the following goals:

- Applies the principles stated above.
- Contains no tax or fee increase.
- Preserves local government revenue stream.
- Promotes competition in the marketplace.
- Promotes deployment of broadband as a basic communication tool.

North Carolina is not alone in grappling with the issue of how to tax and regulate telecommunications and video programming services. Congress as well as other states is considering legislation on this issue. At this time, at least four states have enacted legislation changing the regulation and taxation of telecommunications and video programming services and at least eight other states have legislation pending on the issue.

BILL ANALYSIS: House Bill 2047, *Video Service Competition Act,* establishes uniform taxes for video programming services and seeks to promote consumer choice. It establishes equal taxation of the same service by applying the State 7% sales tax to all video programming services, repealing the local authority to impose a local franchise tax, and repealing the sales tax credit allowed to cable companies for local franchise tax paid. It preserves the local government revenue stream by distributing part of the sales tax revenues from telecommunications and video programming services to the counties and cities. The distribution formula is based upon the amount of cable franchise tax imposed during the first six months of fiscal year 06-07 plus any subscriber fees imposed during that same period.

The bill promotes competition by providing a State franchise process, in lieu of the current locally negotiated franchise agreements. It seeks to ensure competitive neutrality by allowing cable providers to opt-out of existing local agreements when one or more households in the franchise area may be served by both the existing provider and the holder of a State-issued franchise. The bill specifically prohibits discrimination in the provision of video programming services and declares a violation of this law to be an unfair or deceptive trade practice. The holder of a State-issued franchise must comply with customer service and emergency alert requirements established by the Federal Communications Commission. The

bill designates the Consumer Protection Division of the Attorney General's Office as the State agency to receive customer complaints regarding video programming services.

The bill preserves local regulation of public rights-of-way and provides for PEG channel support and growth. The bill requires local governments that imposed subscriber fees to use a portion of the amount of revenue distributed to it for PEG channel operation and support. In addition to this mandated funding, the bill provides $2 million for supplemental PEG support through direct appropriation for PEG channel support and operation, and through grants. The bill provides that existing franchise agreements will determine the number, service tier placement, and transmission quality required of PEG channels under a State-issued franchise. In the absence of an existing agreement, the number of PEG channels a county or city may have is determined by the area's population. A local entity may acquire additional PEG channels, with the maximum number of channels set at seven. The bill also requires cable service providers to provide free basic service to local public buildings.

Section-by-section analysis of the bill:

Section 1 of the bill replaces the authorization to counties and cities to award a franchise for cable service with a State franchising authority, effective January 1, 2007. The bill provides that a county or city may not award or renew a franchise for cable service after this date. The bill designates the Secretary of State as the exclusive franchising authority in the State for cable service provided over a cable system. The terms 'cable service' and 'cable system' track the definitions in federal law. The bill would require the franchising of cable service that is required to be franchised under federal law. The bill does not expand the services that need to be franchised beyond those currently required to be franchised under federal law.

State issued franchise. The State franchise process is one of notice, not regulation. To receive a State-issued franchise, a person must file a notice of franchise with the Secretary of State and pay a fee of $125. A person who files a notice of franchise with the Secretary must begin providing cable service within 120 days after the notice is filed. If service is not provided within this period, the notice of franchise terminates 130 days after it was filed. The notice of franchise must include the applicant's name and principal place of business, a description and map of the area to be served, a list of each county and city in which the described service area is located, and a schedule indicating when service is expected to be offered in the service area. A person who fails to file a notice of franchise is subject to a civil penalty of $250 a day until the document is filed.

Notice of Service. Once cable service is provided, the holder of a State-issued franchise must file a notice of service with the Secretary within 10 days after the cable service begins. A person who fails to file a notice of service is subject to a civil penalty of $250 a day until the document is filed. The notice of service must include the effective date of the notice of franchise for that area, a description and map of the service area, and a statement that cable service has begun in the service area.

Annual Service Report. The holder of a State-issued franchise must also file an annual service report on or before July 31 of each year and pay a fee of $20. A person who fails to file an annual service report is subject to a civil penalty of $250 a day until the document is filed. The annual service report must include all of the following:

- The effective date of a notice of franchise for that area.
- A description and map of the service area.
- The approximate number of households in the service area.
- A description and map of the households passed in the service area as of July 1.

- The percentage of households passed in the service area as of July 1.
- The percentage of households passed in the service area as of July 1 of any preceding year for which a report was required.
- A report indicating the extent to which the holder has met the customer service requirements.
- A schedule indicating when service is expected to be offered in the service area, to the extent the schedule differs from one included in the notice of franchise or in a report previously submitted, and an explanation of the reason for the new schedule.

Existing agreements. The State franchising authority does not affect a local franchise agreement that was awarded by a county or city and is in effect on January 1, 2007, except as follows:

- Effective January 1, 2007, gross revenue used to calculate the payment of a local franchise tax does not include gross receipts from cable service subject to the State sales tax.
- A local franchise agreement may be terminated when a notice of service indicates that one or more households in the franchise area of the existing agreement are passed by both the cable provider under the existing agreement and the holder of a State-issued franchise.

Termination of existing agreements. To terminate an existing agreement, a cable service provider must file a notice of termination with the affected county or city and file a notice of franchise with the Secretary of State. A notice of termination becomes effective at the end of a month. A termination of an existing agreement ends the obligations under the agreement and under any local cable regulatory ordinance as of the effective date of the termination.

Service standards and requirements. The bill specifically prohibits discrimination in the provision of the cable service. A violation of the law is considered an unfair and deceptive trade practice. In determining whether a cable service provider has violated the law, the following factors may be considered: the length of time since the provider filed the notice of service for the area, the cost of providing service to an area, technological impediments to providing service to an area, the inability to obtain access to property required to provide service to an area, and competitive pressure to respond to service offered by another cable provider. The information in the annual service reports may be used to help determine whether a violation of the law has occurred.

A cable service provider must comply with the customer service requirements and emergency alert requirements established by the Federal Communications Commission. The Consumer Protection Division of the Attorney General's Office is designated as the State agency to receive and respond to consumer complaints. A cable service provider who fails to resolve a customer complaint raised by the Division in a reasonable time and manner is subject to a civil penalty of $100 a day until the complaint is resolved.

PEG channels. The bill requires a cable service provider operating under a State-issued franchise to include the transmission of PEG channels. A county or city may make a written request for PEG channel capacity and the cable service provider must provide the requested capacity within 120 days after it receives the request. If the area is included in both the franchise area of an existing agreement and the service area of a State-issued franchise, then the terms of the existing agreement as of the filing date of the notice of franchise determine the number, service tier placement, and transmission quality of the initial PEG channels required under the State-issued franchise. If no existing agreement includes any part of the service area of a State-issued franchise, then the number of PEG channels required under the State-issued franchise depends upon the population of the city in which part or all of the service area is located. If the city's population is at least 50,000, the provider must provide up to three PEG channels. If

the city's population is less than 50,000, the provider must provide up to two PEG channels. The PEG channels must be placed on a basic service tier and the transmission quality must be equivalent to those of the closest city covered by an existing agreement. In no event may a city or county have fewer PEG channels than would be allowed to an area that is not covered under an existing agreement.

The maximum number of PEG channels a cable service provider must provide to a county or city is seven. If a county or city does not have seven PEG channels, including the initial PEG channels, it may request additional channels. The additional channels may be provided on any service tier and the transmission quality of the additional channels must be at least equivalent to the transmission quality of the other channels provided. The PEG channels operated by a county or city must meet the following programming requirements in order for the county or city to obtain additional channels:

- All of the PEG channels must have scheduled programming for at least 80% of the time for at least 8 hours a day.
- The programming content of each PEG channel must not repeat more than 15% of the programming content on any of the other PEG channels.
- No more than 15% of the programming content on any PEG channel may be character-generated programming.

A cable service provider is responsible only for the transmission of a PEG channel. A county or city to which the PEG channel is provided is responsible for the operation and content of the channel.

PEG channel grants. The bill establishes the PEG Channel Fund as an interest-bearing special revenue fund. The purpose of the Fund is to provide matching grants to counties and cities for PEG channel support. The e-NC Authority administers the Fund.[2] A grant may only be used for capital expenditures necessary to provide PEG channels. The size of a grant may not exceed $20,000 and an applicant may receive no more than one grant per fiscal year. The applicant must match the grant on a dollar-for-dollar basis. The Authority must publish an annual report on the grants awarded from the Fund.

Service to public buildings. At the written request of a county or city, a cable service provider operating under a State-issued franchise must provide cable service without charge to a public building located within 125 feet of the provider's cable system. The required service is the basic, or lowest-priced, service the provider offers to customers. Only one service outlet is required for a building. A public building is a building used as a public school, a charter school, a library, or a function of the county or city.

Sections 2 and 3 of the bill would apply the State sales tax equally to all video programming services, regardless of who provides the service. Section 2 defines the term 'video programming' to be programming provided by, or generally considered comparable to programming provided by, a television broadcast station, regardless of the method of delivery. The term is broader than 'cable service provided over a cable system'. It would include cable services offered over private rights-of-way as well as those offered over public rights-of-way. Section 3 imposes the State's 7% sales tax on the gross receipts derived from providing video programming to a subscriber in this State.[3]

Sections 4 through 6 of the bill would make technical and conforming changes to the provisions governing bundled transactions.

---

[2] The e-NC Authority is charged with managing and promoting high-speed broadband Internet access.

[3] Although the term video programming includes broadcast services, the provision of these services would not be taxed unless the provider sells the service to subscribers and thus realizes gross receipts from the provision of the services.

Sections 7 and 8 of the bill would distribute a share of the sales tax revenues imposed on video programming to counties and cities. The revenue distributed is local revenue, not a State expenditure. Therefore, the Governor may not reduce or withhold the distribution.

Section 7 would increase the amount of the sales tax revenue derived from telecommunication services distributed to cities and counties. Section 8 would distribute the following portion of the gross receipts derived from video programming to counties and cities: 22.61% of the net proceeds collected on video programming, other than on direct-to-home services and 37% of the net proceeds collected on direct-to-home satellite service.[4] The distributions would be made quarterly.

The amount distributed would be allocated as follows:

- Two million dollars ($2,000,000) a year would be distributed as supplement PEG channel support. A portion of this amount will be distributed to counties and cities with qualifying PEG channels.[5] The amount per qualifying PEG channel would be $25,000. A county or city could not receive supplemental PEG channel support for more than three PEG channels. The amount distributed to a county or city as supplemental PEG channel support must be used by it for the operation and support of PEG channels. If the amount to be distributed for qualifying PEG channels in a fiscal year is less than $2,000,000, the Secretary must credit the excess amount to the PEG Channel Fund to be used for matching local grants for PEG channel support.
- The remainder of the revenues to be distributed would be allocated between the counties and cities on a proportional basis. The proportionate share of a county or city is the base amount for the county or city compared to the base amount for all counties and cities. The base amount for a county or city that did not impose a cable franchise tax before July 1, 2006, would be $2 times the most recent annual population estimate for that county or city. The population of the county would be the population of its unincorporated areas plus the population of an ineligible city in the county. The base amount for a county or city that imposed a cable franchise tax before July 1, 2006, is the amount of cable franchise tax and subscriber fee revenue the county or city certifies to the Secretary it imposed during the first six months of fiscal year 06-07. For subsequent fiscal years, the amount each county or city receives would be adjusted based upon its percentage change in population.

A county or city that imposed subscriber fee revenue must use a portion of the amount distributed to it for PEG channel operation and support. The amount it must use for this purpose is two times the amount of revenue it certified to the Secretary it imposed as subscriber fees during the first six months of fiscal year 06-07. The remainder of the money distributed to counties and cities may be used for any public purpose.

Section 9 would repeal the credit against the State sales tax on cable services for local franchise tax paid since the local franchise tax is repealed in Section 13.

Section 10 would repeal the county's authority to franchise cable television services.

Section 11 would repeal the county's authority to impose a franchise tax on cable services.

Section 12 would prohibit a city from imposing a tax on video programming services.

Section 13 would repeal the city's authority to impose a franchise tax on cable services.

---

[4] This percentage distribution from satellite TV services mirrors the 2.5% local sales tax on satellite radio services.
[5] A 'qualifying PEG channel' is a channel that meets the programming requirements under G.S. 66-357(d).

Section 14 would clarify that a city may not impose a fee or charge for use of the public right-of-way unless the fee or charge applies uniformly to all non-municipal users of the public right-of-way.

Section 15 would repeal the city's authority to franchise cable television services.

Section 16 would require a county or city desiring to receive a distribution for supplemental PEG channel support under G.S. 105-164.44I(c) to certify to the Secretary of Revenue by January 15, 2007, the number of qualifying PEG channels it operates.

Section 17 recognizes that the staffing needs of the Consumer Protection Division of the Attorney General's Office may change if this bill is enacted. However, the section also finds that the impact of this bill on the staffing needs of the Division is not clear. This section requests the Office of the Attorney General to monitor the number and type of cable service complaints it receives from customers and to determine whether the Division needs additional staff to fulfill the duty imposed by this bill on it. The Office of the Attorney General must make a report concerning its staffing needs to the Fiscal Research Division by April 1, 2007.

Section 18 would provide that an award of a State-issued franchise does not affect a determination of whether video programming provided by the holder of the franchise is considered cable service provided over a cable system under federal law.

Section 19 would provide that the provisions of this act are severable.

Section 20 would direct the Revenue Laws Study Committee to review the effects of this act on competition in video programming services, the number of cable service subscribers, the price of cable service by service tier, the technology used to deliver the service, and the deployment of broadband in the State. The Committee would see if any changes to the law are necessary and would report its findings and recommendations to the 2009 General Assembly.

EFFECTIVE DATE: The bill becomes effective January 1, 2007.

H2047e1-SMRB-CSRB

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

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

DATE: May 31, 2006

TO: Representatives Luebke, McComas, Wainwright, and Carney

FROM: Brenna Erford
Fiscal Research Division

RE: House Bill 2047 (Proposed Committee Substitute to First Edition)

FISCAL IMPACT

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

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES:					
General Fund	**No Impact to General Fund**				
Local governments	**Possible net gain up to $3.3 million; see Assumptions & Methodology**				
EXPENDITURES:	**See Assumptions & Methodology**				
POSITIONS (cumulative):	**See Assumptions & Methodology**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Department of Revenue; Consumer Protection Division of the NC Office of the Attorney General; NC Secretary of State; NC Department of Revenue; e-NC Authority; local governments

EFFECTIVE DATE: January 1, 2007

BILL SUMMARY: The Consumer Choice in Cable and Uniform Taxation of Video Programming Services Act:

- Establishes a statewide video service franchising process;
- Makes changes to the regulatory treatment of existing local cable franchises;
- Eliminates local governments' authority to assess and collect cable franchise fees;
- Replaces local revenues from franchise fees with a new distribution of shared sales tax collections from telecommunications, cable service, and satellite television service;
- Removes the state tax credit for franchise fees paid to local governments;
- Provides for a proportional tax distribution to local governments based on previous revenues from cable, including franchise fees and per subscriber charges;
- Provides for public, educational, and governmental (PEG) channel funding via several mechanisms;
- Designates the North Carolina Secretary of State as the exclusive statewide video service franchising authority;
- Designates the Consumer Protection Division of the North Carolina Office of the Attorney General as the agency responsible for handling consumer complaints.

This bill does not raise taxes on cable service, telecommunications, or home satellite television services. All these services remain subject to the general shared sales tax rate of 7%. However, this bill significantly alters the calculation of the local share of shared sales tax and creates an entirely new distribution method for the local share of shared sales tax collections. The bill does three things that significantly alter the composition of the local share:

- Local governments will no longer be able to assess and collect cable franchise fees. This revenue will be replaced by the local distribution scheme set forth in the bill. Under this proposal, local governments will receive a portion of sales tax collections from cable service equal to 22.61%, an increased portion of the existing telecommunications sales tax, and a share of sales tax collections on satellite television service.
- The tax credit equal to the amount of franchise fees paid to local governments created in 2005 is eliminated.
- Local governments will effectively receive a larger portion of state sales tax collections on telecommunications. This new portion will be equal to 7.23% of total telecommunications sales tax collections, which is equivalent to 22.61% of total sales tax collections for telecommunications less the local share already received pursuant to G.S. 105-164.44F according to Fiscal Research estimates.
- Local governments will be granted a share of sales tax collections from home satellite television service equal to 2.5% of the 7% general sales tax, or approximately 37% of sales tax collections.

ASSUMPTIONS AND METHODOLOGY: Fiscal Research estimates that all North Carolina local governments will be effectively held harmless by this change. The sum of the local shares of these three industries (approximately $65.3 million) is estimated to exceed actual aggregate local collections of cable franchise fees and per subscriber charges by approximately $3.3 million.

Current Law and Estimated Tax Collections by Industry

During the 2005 session, cable service, telecommunications, and home satellite television service were brought under the general state sales tax rate of 7%.

The chart below shows estimated total sales tax collections for cable service, telecommunications, and home satellite television service for FY 2005-06. These amounts have been adjusted to reflect the 2005 rate changes. The municipal share amount shows the amount received or collected by local governments under current law.

Estimated Sales Tax Collections by Industry and State/Local Share under Current Law			
	2005-06 Adjusted		
	Net collections	State share	Local share*
Telecommunications sales tax	395,714,195	334,850,718	60,863,477
Cable service**	91,350,000	26,100,000	65,250,000
Satellite	43,220,000	43,220,000	N/A
Total, all industries	530,284,195	404,170,718	126,113,477

*Local share reflects 18.03% of total telecommunications sales tax less the "freeze deduction" as required in G.S. 105-164.44F

**Net collections for cable have been estimated from municipal share. The local share ($65.3 million) reflects estimated total cable revenues collected directly by local governments, not by the state.

- For telecommunications, the $60.9 million local share is the 18.03% of telecommunications sales tax less a "freeze distribution" created under G.S. 105-164.44F. This portion of local share is not altered by this legislation.
- For cable service, the local share shown ($65.3 million) is the estimated amount of cable revenues assessed and collected by local governments in 2005. Currently this money is collected directly by local governments, primarily in the form of cable franchise fees. Under federal law, local government units can assess a franchise fee of up to 5% on a locally negotiated definition of gross revenues. This is also the estimated amount of the cable tax credit.
- Sales tax collections from home satellite television service are not currently shared with local governments.

The following sections outline the change in calculation of the local share of cable, telecommunications, and satellite sales tax collections as well as the change in distribution to local governments as it pertains to each industry.

Telecommunications

In 2005, the tax on telecommunications was increased from 6.0% to the general sales tax rate of 7.0%. The change was effective Oct. 1, 2005. Under G.S. 105-164.44F local governments receive a per capita distribution of 18.03% of sales tax collections on telecommunications service less a "freeze deduction" of $2,620,948 on a quarterly basis. This legislation does not alter this portion of the local government share of sales tax on telecommunications. Under this bill, local governments will continue to receive a distribution of total sales tax collections on telecommunications pursuant to G.S. 105-164.44F, plus an additional share of collections equal to 7.23% of gross sales tax collections on telecommunications. This additional share of collections is estimated at $28.6 million based on 2005-06 estimated collections.

Cable Service

Effective January 1, 2006, the general sales tax rate of 7% was applied to cable service, which had previously only been taxed at the local level. Taxpayers also receive an approximate 5% credit against this tax for local cable franchise taxes paid,[1] which is removed by the bill.

At this time, the two months of collections data available for this tax expenditure are not sufficient to estimate the credit's actual cost, so this memo assumes an estimated $65.3 million for the cost of the cable tax credit.[2] However, survey research conducted by the Fiscal Research Division suggests that the actual amount of cable franchise fees and per subscriber charges collected by North Carolina local governments is approximately $62 million, which suggests that local governments may gain up to $3.3 million in new money from this legislation.

The local share of cable sales tax collections under the distribution established by this bill is estimated at $20.7 million based on 2005-06 estimated collections.

Satellite

The tax on home satellite television service was increased from 5.0% to 7.0% effective Oct. 1, 2005. Currently, all collections of this tax go to the General Fund. Under this legislation, 37% (or 2.5% of the 7.0% general sales tax rate) of satellite tax collections would be shared with local governments.

Based on early Department of Revenue data, satellite tax collections are exhibiting a rapid rate of growth, especially in relation to collections from cable service. This estimate for satellite uses a conservative annual growth rate of 8%.

Fiscal Research estimates that sales tax collections for satellite will be approximately $43.2 million for FY 2005-06. The 37% local share would be $16.0 million based on 2005-06 estimated collections.

Proposed Local Share of Sales Tax Collections by Industry

The chart below illustrates the local share of sales tax collections by industry. **This local share calculation is intended to hold local governments whole with the elimination of local franchise fees and to supply local governments with funds for PEG channel support.** The $65.3 million local share calculated through this distribution equals the estimated 2005 cable franchise fee revenues that would be foregone under this legislation.

---

[1] Federal law caps local franchise taxes at 5% of gross revenues, suggesting 2% of the 7% state sales tax goes to the state. Fiscal Research Division survey research suggests that not all North Carolina local governments with cable franchises assess franchise fees at the maximum 5% rate, and that the actual value of the tax credit may be somewhat less than 5% of cable's total sales tax liability.

[2] The cost of the cable tax credit was estimated at $65 million in the 2005 Tax Expenditure Report published by the North Carolina Department of Revenue

Proposed Local Share of Sales Tax Collections by Industry	
2005-06 Adjusted	
Industry	Local share
Telecommunications***	28,607,502
Cable	20,654,235
Subtotal	*49,261,737*
Satellite	15,991,400
Total	**65,253,137**

Distribution of Sales Tax to Local Governments

Under this bill, the combined 7.23% of sales tax collections on telecommunications, 22.61% of state sales tax collections on cable service and 37% of sales tax collections on home satellite television service would be distributed to North Carolina local governments on a proportional basis. The proportionate share for each local government is calculated by dividing a local government's actual collections, including actual franchise fee collections and any per subscriber charges for PEG support, by the total of all local government cable revenues. The base amount of a county or city that imposed a cable franchise tax before July 1, 2006, is the amount of cable franchise tax and subscriber fee revenue the county or city certifies to the Secretary was imposed during the first six months of FY 2006-07 (July 1, 2006 through January 1, 2007). The purpose of this time period is to capture the effect of franchise fee rate increases enacted by local governments for the 2006-07 fiscal year. The bill also provides that counties or cities that did not impose a cable franchise fee before July 1, 2006, are entitled to a share equal to $2.00 times the most recent population estimate for the city or county in question. Fiscal Research estimates that sixty-five cities and two counties do not currently impose a franchise fee. The total population of those sixty-seven local governments is approximately $155,780, which at a $2.00 pro rate share creates a $311,560 addition into the distribution.[3]

In subsequent years, the proportionate share for each municipality will be recalculated to reflect per capita growth. The distribution would be effective January 1, 2007.

Based on available data, Fiscal Research believes that under this distribution scheme no municipality will receive less revenue than they would have received

Public, Educational, and Governmental (PEG) Channel Support

This bill contains three mechanisms to provide financial support for public, educational, and governmental (PEG) channels. Local governments are required to certify revenues received from franchise fees and from per subscriber charges to the Department of Revenue. If a local government has been receiving per subscriber charges for PEG support, a portion of the revenue that local government receives from the Department of Revenue via the distribution created in this bill equal to the amount of per subscriber fees collected must be used for PEG channel support.

[3] This change does not reduce the $2 million available for PEG funding via lump-sum payments and grants, but it slightly reduces the residual unreserved amount that will be available for distribution directly to local governments.

In addition, the bill allows local governments that operate PEG channels providing local programming to collect $25,000 per channel, up to 3 channels, per year in the form of four quarterly installments of $6,250. These funds are to be deducted from the total local share of sales tax collections before the local distribution formula is applied. The bill caps the amount of annual PEG support to local governments at $2 million. Reliable data on the number of qualifying PEG channels in North Carolina is not available, but based on discussions with public programming interest groups, this memo assumes there are 36 PEG channels currently operating in North Carolina that would qualify for this funding. In total, the impact of this provision is estimated at $900,000 annually.

The bill also creates the PEG Grant Fund. Any funds **not** disbursed to local governments for PEG support ($25,000 per qualifying PEG channel), up to the $2 million limit, are to be deposited in the PEG Grant Fund for the purpose of making grants to local governments to fund capital expenditures for PEG channels. The e-NC Authority is responsible for administering the fund and awarding grants subject to the following limitations:

- The size of a grant may not exceed $20,000
- The local government applicant must match the grant on a dollar-for-dollar basis
- The grant may only be used for capital expenditures necessary to provide PEG channels
- An applicant may only receive one grant per year

In addition, the e-NC Authority must publish an annual report on grants awarded. The report must list each grant recipient, the amount of the grant, and the purpose of the grant.

The chart below provides detail on the total amount of revenue set aside for PEG channel support pursuant to this legislation. **The per subscriber fee portion of these funds ($1,195,888) is included in the proportional distribution; therefore PEG funding does not utilize the entire $3.3 million possible gain to local governments.**

Total funds to local governments restricted for PEG support		
Per subscriber fees	$	1,195,888
PEG support funding ($25,000 per qualifying channel)	$	900,000
Grants from PEG Grant Fund	$	1,100,000
Total PEG funding	**$**	**3,195,888**

State Franchising Authority

The Secretary of State is named as the exclusive state franchising authority for cable service provided over a cable system. Applicants must file a notice of franchise with the Secretary and pay a filing fee equal to the filing fee for articles of incorporation, currently $125. A person who files a notice of franchise is required to begin providing service in the designated area within 120 days of filing. In addition, a person providing service must submit an annual service report on or before July 31 of each year. A person who fails to file a notice of franchise, a notice of service, or an annual service report is subject to a civil penalty of $250 per day payable to the Secretary, clear proceeds of which must be remitted to the Civil Penalty and Forfeiture Fund.

Consumer Complaints

The Consumer Protection Division of the North Carolina Office of the Attorney General is named as the agency responsible for addressing consumer complaints. At this time, Fiscal Research does not have any data available on the cost of this change or any positions that may be requested as a result of this change.

Conclusion

The chart below contrasts current law with the proposed tax changes in this bill and illustrates how the total shared sales tax revenue to both the state and local governments is held the same.

Comparison of State and Local Share under Current and Proposed Law						
	(in millions)					
	Current law		**Proposed**		**Change**	
	State	Local	State	Local	State	Local
Telecommunications	334.8	60.9	306.2	89.5	(28.6)	28.6
Cable service	26.1	65.3	70.7	20.7	44.6	(44.6)
Satellite	43.2	-	27.2	16.0	(16.0)	16.0
Total	**404.1**	**126.2**	**404.1**	**126.2**	-	-

SOURCES OF DATA: North Carolina Department of Revenue, North Carolina Fiscal Research Division, North Carolina State Data Center, Federal Communications Commission, U.S. Census Bureau, North Carolina Utilities Commission

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Brenna Erford

APPROVED BY:

DATE:

Re: HB 2047 & SB 1559 – Video Franchising

Dear Legislators:

This is to express the remaining **serious concerns** of the League's municipal membership about the current proposed committee substitute for these pending bills. Some legislators have let us know that one or more lobbyists have told them that the League is "satisfied" with the bill. **Not true—no representative of the League has ever said that this bill is acceptable as it stands**. As always, of course, we are very willing to work with members on amendments to protect the public interest.

We ask that you please consider these bills very deliberately through the committee process and listen carefully to public interest concerns that you will hear from many groups. This issue is not as easy or simple as the phone company representatives would have you believe.

Some key points that we urge you to consider:

- **OUR MUNICIPAL MEMBERSHIP WANTS COMPETITION** in video service. Real competition with broad based benefit is a good thing. It does not appear that this bill will achieve that result.

- Local franchising is **not stopping** phone companies from offering competitive video service. The federal Telecommunications Act has allowed that since 1996. Local franchise provisions would prevent phone companies from cherry picking and offering service in just the most profitable neighborhoods, so that many residents would never enjoy the benefits of competition. Local officials are very willing to provide a phone company franchise quickly, with terms no more or less favorable than the cable company franchise, as federal law requires. BellSouth says they don't want that deal.

- Small phone companies now offer **competitive video service in several NC communities** under local franchises that are just like the cable company franchise, including Lexington and Concord. A front page story in today's *News & Observer* spells that out (May 31). If

the small phone companies can do that, why can't BellSouth do it without changing the rules?

- Our membership has indicated that they are not hung up on maintaining local franchising authority, so long as state law contains provisions necessary to protect the public interest. The current drafts do not.

- The bill contains **no build-out provisions** to prohibit the phone company from selecting just the most profitable neighborhoods for service. Worse, it **allows the cable company to bail out of the local franchise** as soon as a competing phone company with a State-issued franchise "passes (?)" one household in the cable franchise area. The result would be that **NO COMPANY WOULD BE LEGALLY REQUIRED TO SERVE ANYWHERE**.

- In the future, more customers will receive voice, data and video services over one wire from one provider. Some neighborhoods in developed areas might get left behind, or might have access only with outdated technology, since this bill contains no service area requirements. THIS HAS THE POTENTIAL TO DEEPEN THE DIGITAL DIVIDE.

- A speaker reminded the Revenue Laws committee that the phone companies had provided universal phone service. He neglected to mention that the industry did that under government requirements, with the benefit of a universal service fund into which all of us still are paying.

- The phone companies have stated in government filings and otherwise that they aim to serve mostly "high value" areas, and few "low value" areas. BellSouth has acknowledged publicly that service areas will be limited, and they want no service area requirements. "It is not our goal to serve every customer out there. It is our goal to provide as many products and services to the customers we serve. We're losing lines, but growing the business on the broadband side." (Krista Tillman, BellSouth chief executive in NC, *News & Observer*, February 7, 2006).

- The phone companies emphasize the "non-discrimination" provisions. Those are virtually meaningless, since they provide only that the phone company "may not deny access to the service to any group of potential residential subscribers **within the filed service area** because of the race or income of the residents." The discrimination will occur in the selection of areas to be served, not within the service areas selected by the phone companies. The provision contains lengthy waffle language that will make it difficult to sustain any discrimination claim. **This weak non-discrimination provision is no substitute for reasonable, meaningful build-out requirements**. We commend the **build-out provisions in the recently enacted Virginia legislation** for your consideration.

- Incredibly, the bill mandates local government enforcement of the FCC minimum customer service standards. The League membership is **vigorously opposed** to that **unfunded mandate**, which would be especially difficult for small towns. Respectfully, if the General Assembly decides to pre-empt local franchising and take away all meaningful local government authority, municipal officials DO NOT want to be stuck with this thankless task.

- If phone companies enter the video business, they have some community obligations and should provide public, educational and government-access channels and operating support, just like cable companies. We appreciate the provisions that the Revenue Laws committee put in the bill, but other groups will address improvements that should be made.

- City taxpayers own the **street rights-of-way** that are being used to provide this service, and their elected representatives need to retain authority to regulate use (digging, placement of fiber optics and cable, repair of pavement and traffic control) and receive reasonable fees. The current draft includes some new restrictions that we are evaluating with our membership.

- Franchise fees, in part, are compensation for private use of the publicly owned rights-of-way. **We thank the members of the Revenue Laws committee** for directing the legislative staff to work with us to fashion provisions to assure adequate and secure local

revenues. Those appear to be acceptable, but we will carefully review fiscal notes and any amendments that might be proposed. We also thank the bill sponsors for responding to some of our expressed concerns, and we look forward to continuing to work with them.

We thank you for your consideration. If some version of this bill is to be enacted, our membership believes that it needs significant improvement first.

Ellis Hankins
Executive Director
NC League of Municipalities
919-715-3938
Cell 919-349-8988
ehankins@nclm.org

Re: HB 2047 & SB 1559 – Video Franchising

Dear Legislators:

This is to express the remaining **serious concerns** of the League's municipal membership about the current proposed committee substitute for these pending bills. This bill does **not** represent any consensus to which the League has agreed. The issues in this bill are not easy or simple—they are at the intersection of federal, state and local law.

We ask that you please **take the time needed** to consider these bills very deliberately through the committee, or subcommittee, process. Please listen carefully to public interest concerns being expressed by many groups. As always, we are very willing to work with members on amendments to protect the public interest.

Please consider the following points:

- **OUR MUNICIPAL MEMBERSHIP WANTS COMPETITION** in video service. Real competition with broad based benefit is a good thing. It does not appear that this bill will achieve that result.

- Local franchising is **not stopping** phone companies from offering competitive video service. The federal Telecommunications Act has allowed that since 1996. Local franchise provisions would prevent phone companies from **cherry picking** and offering service in just the most profitable neighborhoods, so that **many residents would never enjoy the benefits of competition**. Local officials are very willing to provide a phone company franchise quickly, with terms no more or less favorable than the cable company franchise, as federal law requires. BellSouth says they don't want that deal.

- Small phone companies now offer **competitive video service in several NC communities** under local franchises that are just like the cable company franchise, including Lexington and Concord. A front page story in today's *News & Observer* spells that out (May 31). If the small phone companies can do that, why can't BellSouth do it without changing the rules?

- Our membership has indicated that they are **not hung up on maintaining local franchising authority**, so long as state law contains provisions necessary to **protect the public interest**. The current drafts do not.

- The bill contains **no build-out provisions** to prohibit the phone company from selecting just the most profitable neighborhoods for service. Worse, it **allows the cable company to bail out of the local franchise** as soon as a competing phone company with a State-issued franchise "passes (?)" one household in the cable franchise area. The result would be that **NO COMPANY WOULD BE LEGALLY REQUIRED TO SERVE ANYWHERE**.

- In the future, more customers will receive voice, data and video services over one wire from one provider. Some neighborhoods in developed areas might get left behind, or might have access only with outdated technology, since this bill contains no service area requirements. THIS HAS THE POTENTIAL TO DEEPEN THE DIGITAL DIVIDE.

- A speaker reminded the Revenue Laws committee that the phone companies had provided universal phone service. He neglected to mention that the industry did that under government requirements, with the benefit of a universal service fund into which all of us still are paying.

- The phone companies have stated in government filings and otherwise that they aim to serve mostly "high value" areas, and few "low value" areas. BellSouth has acknowledged publicly that service areas will be limited, and they want no service area requirements.

- The phone companies emphasize the "**non-discrimination**" provisions. Those are meaningless, since they provide only that the phone company "may not deny service to any group of potential residential subscribers **within the filed service area** because of the race or income of the residents." The **discrimination will occur in the selection of areas to be served**, not within the service areas selected by the phone companies. The provision contains waffle language to make it impossible to sustain any discrimination claim.

This weak non-discrimination provision is no substitute for reasonable, meaningful build-out requirements. We commend the **build-out provisions in the recently enacted Virginia legislation** for your consideration.

- Municipal officials want effective enforcement of the FCC minimum customer service standards. It is difficult to see how that will be accomplished.

- If phone companies enter the video business, they have some community obligations and should provide public, educational and government-access channels and operating support, just like cable companies. We appreciate the provisions that the Revenue Laws committee put in the bill, but other groups will address improvements that should be made.

- City taxpayers own the **street rights-of-way** that are being used to provide this service, and their elected representatives need to retain authority to regulate use (digging, placement of fiber optics and cable, repair of pavement and traffic control) and receive reasonable fees. The current draft includes some new restrictions that we are evaluating with our membership.

- Franchise fees, in part, are compensation for private use of the publicly owned rights-of-way. **We thank the members of the Revenue Laws committee** for directing the legislative staff to work with us to fashion provisions to assure adequate and secure local revenues. Those appear to be acceptable, but we will carefully review fiscal notes and any amendments that might be proposed. We also thank the bill sponsors for responding to some of our expressed concerns, and we look forward to continuing to work with them.

We thank you for your consideration. If some version of this bill is to be enacted, our membership believes that it **needs significant improvement** first.

Ellis Hankins
Executive Director
NC League of Municipalities

919-715-3938
Cell 919-349-8988
ehankins@nclm.org

COMMENTS TO THE HOUSE FINANCE COMMITTEE
June 1, 2006

Thank you for the opportunity to comment on substitute House Bill 2047. Like most of the local governments in the State of North Carolina, The City of Raleigh heartily supports the goal of promoting consumer choice in video service providers.

The telephone company's representation that municipalities are reluctant to provide franchises is false. The City of Raleigh has offered franchises to the telephone companies, and other qualified potential providers, on several occasions since the barriers to their entry into the field were removed in 1996. The telcos have all chosen to decline these offers.

The professional effort that has gone into developing this bill to this point is obvious and much appreciated. Unfortunately, *HB 2047 falls far short of receiving consensus support.* As evidenced by today's public comments, virtually all stake-holders have serious concerns and reservations. HB 2047 has several weaknesses that need to be addressed before it is submitted for vote. Inadequate provisions of HB 2047 include:

- *Current consumer protections would be removed.* Customers with unresolved complaints will no longer be able to depend on their local municipalities for assistance. State level agencies do not have the resources, personnel, experience, training or orientation necessary to deal with the thousands of customer service related complaints currently received and resolved by local communities each year. Penalties for transgressions have not been developed. Residents of the State of North Carolina must not be robbed of their current, locally enforced, consumer protections.
- *Revenues going forward have not been adequately addressed.* Under the proposed reimbursement formula, sales tax revenue generated in municipalities enjoying more taxable optional cable services, and therefore generating more sales tax revenue per cable customer, will be diverted to municipalities with fewer taxable optional services. Shouldn't municipalities that generate more sales tax revenue per resident receive back a more proportionate share of that revenue?
- *Build-out requirements and the anti-discrimination restrictions are inadequate.* Under this bill service areas would be selected solely at the discretion of the applicant, and a franchise would be automatically granted. As the Verizon spokesperson seemed very pleased to admit in

his statements to the Committee on 6/01/2006; Verizon is very willing to provide service to, and collect revenue from, people living in affluent neighborhoods, without regard to the ethnic makeup of those neighborhoods. It also seems, as they have repeatedly stated and demonstrated, that they have no interest in serving "low wealth" neighborhoods and low density rural areas. All neighborhoods should have equal access to these services.

- *Local control of public rights-of-way is usurped* by the requirement that all applicants automatically receive permission to operate in the PROW. At present, all potential users of the PROW must meet specific safety, insurance and procedural requirements before the can begin operation in the PROW. At present, these requirements are enforced equally with all users of the PROW.
- *PEG requirements and support are inadequate* and do not address or take into account the extremely local nature and orientation of these valuable communication outlets. The programming requirements would be unreachable. Federal standards permit franchising authorities to require and implement a Leased Access channel, where commercially supported local programming may be presented.
- *The benefits of Institutional Networks, or their more modern equivalents, are ignored.* Provision should be made to enforce current I-Net type franchise requirements. Current federal regulations permit franchising authorities to require I-nets, and also provide for recovery of costs by the cable provider.
- *Other provisions of HB 2047 would benefit from clarification and refinement.* As an example, the bill requires cable providers to provide free basic cable service to public buildings within 125 feet of the system. Due to the requirements of, and benefits made possible by, new technologies the issue of the length of the drop and the provision of any equipment necessary to receive digital basic service or the Video over Internet Protocol (VoIP) approach which may be used by a new provider, must be addressed.

Changes in the franchising process are needed to encourage competition and provide more consumer choice. However, it took over 50 years to develop the regulations that have resulted in the remarkable benefits currently enjoyed by residents of the State of North Carolina. Haste will benefit no one. It is unreasonable to assume that these extensive regulations can be effectively rewritten in a few short weeks. Please take the time necessary to assure that all proposed changes will be beneficial to the residents of North Carolina.

North Carolina General Assembly

House Committee on Finance

Minutes

~

June 6, 2006

The House Committee on Finance met on Tuesday, June 6, 2006 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Alexander, Gibson, Howard, Luebke, McComas and Wainwright; Vice-Chairs Daughtridge, Hill, Ross, Weiss, and Womble; and Representatives B. Allen, Blackwood, Blust, Bordsen, Capps, Carney, Dockham, England, Faison, Fisher, Folwell, Glazier, Goforth, Hackney, Harrell, Holliman, Jones, Lewis, Lucas, McGee, Rayfield, Underhill, Walend and Wiley. Also present were Sergeant-at-Arms Nell Casper, Fred Hines, Marvin Lee, and Dusty Rhodes. Staff persons present included Cindy Avrette, Rodney Bizzell, Brenna Erford, Canaan Huie, Linda Millsaps, and Martha Walston. The Agenda and Visitor Registration Sheet are attached and incorporated into these minutes as **attachments 1 and 2.**

Chairwoman Howard called the meeting to order at 8:30 am and recognized the six (6) pages present: (1) Phyllis King of Halifax County, sponsored by Representative Jones; (2) Katie Kapp of Wake County, sponsored by Representative Ross; (3) Olivia Hyatt of Union County, sponsored by Representative Blackwood; (4) Molly Edwards of Beaufort County, sponsored by Speaker Black; (5) Taylor Cave of Davie County, sponsored by Representative Howard; and (6) Laura Vanhey of Davie County, sponsored by Representative Howard.

The first bill under the Committee's consideration was **HB 1820 – STEM SATELLITE ANNEXATIONS** (see **attachment 3**). Chairwoman Howard first recognized Martha Walston of Fiscal Research to explain the bill. She stated that the bill exempts the town of Stem from the requirement for satellite annexation that prohibits the total area of satellite annexation from being more than 10% of the primary corporate limits of the annexing city. Following the explanation, Representative Alexander was recognized and moved that House Bill 1820 be given a favorable report by the Committee. Seeing no further discussion, Chairwoman Howard called the motion to a vote and it carried by consent.

The next bill considered by the Committee was **HB 1881 – PINK HILL DEANNEXATION** (see **attachment 4**). Martha Walston was again recognized to explain the bill and stated that the bill de-annexes a lot from the Town of Pink Hill. Chairwoman Howard then recognized Representative Holliman who moved that House Bill 1881 be given a favorable report by the Committee. As there was no further debate, Chairwoman Howard called the motion to a vote and it carried without objection.

Chairwoman Howard then recognized Martha Walston again to explain **HB 1913 – RED CROSS DEANNEXATION** (see **attachment 5**). She noted that this bill had been given a favorable report in the House Local Government II Committee. Mrs. Walston also explained that

the bill de-annexes two tracts of land from the corporate limits of the town of Red Cross and reverts the land back to the previous Stanly County zoning designation. Chairwoman Howard then recognized Representative Hill who moved that House Bill 1913 be given a favorable report by the Committee. Seeing no further discussion, Chairwoman Howard called the motion to a vote and it carried by consent.

The next bill considered by the Committee was **HB 1989 – PRINCETON/SMITHFIELD SATELLITE ANNEXATIONS** (see **attachment 6**). Chairwoman Howard recognized Martha Walston to explain the content of the bill. Mrs. Walston explained that this bill removes the 10% cap on satellite annexations for the towns of Princeton and Smithfield. Following the explanation, Chairwoman Howard recognized Representative Alexander who moved that House Bill 1989 be given a favorable report by the Committee. As there was no further debate, Chairwoman Howard called the motion to a vote and it carried without objection.

Chairwoman Howard then recognized Representative Alexander who moved for the adoption of the proposed committee substitute for the Committee's consideration for **HB 1992 – SHALLOTTE ANNEXATION** (see **attachment 7**). The motion was adopted. Chairwoman Howard then recognized Mrs. Walston of Fiscal Research again to explain the bill. Mrs. Walston explained that the bill annexes two parcels of land to the corporate boundaries of the Town of Shallotte. Chairwoman Howard then recognized Representative Hill, the bill sponsor, who moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. Seeing no further discussion, Chairwoman Howard called the motion to a vote and it carried by consent.

The following bill considered by the Committee was **HB 770 – PARENTAL SAVINGS TRUST FUND TAX DEDUCTION** (see **attachment** 8). Chairwoman Howard first recognized Representative Luebke who moved for the adoption of the proposed committee substitute for the Committee's consideration. The motion was adopted. Representative Dickson was then recognized to explain the bill. She stated that the bill would allow a deduction from taxable income of $5,000 for an individual taxpayer placing money in a Parental Savings Trust Fund. An amount of $10,000 would be allowed for a couple filing a joint return. Chairwoman Howard then recognized Representative Ross who spoke in support of the bill and urged the members of the Committee to also support the bill. Representative Luebke was recognized and asked if the $10,000 deduction would be allowed each year or just over the lifetime of the taxpayer. Canaan Huie of Bill Drafting was recognized and said that the $10,000 deduction is allowed each year in the way the bill is currently written. Chairwoman Howard then recognized Representative Hackney who wanted more information on the fiscal impact of the bill. In response, Brenna Erford of Fiscal Research noted that the bill would have a $2 million impact the first year and a $2.3 million impact the second year.

Representative Gibson was then recognized and said that North Carolina is now at a comparative disadvantage with other states in this area and this bill would begin to allow the state to have similar college savings plans to most other states. Representative Luebke then stated that some couples would be able to receive a deduction of up to $20,000 under the provisions of the bill. Mr. Huie of Bill Drafting then detailed the ways a couple could potentially receive a deduction of $20,000 under the bill. Chairwoman Howard then recognized Representative Luebke who urged the Committee to add a sunset to the bill. Representative Wiley was then recognized and asked about what a parent would do if his or her child did not go to college. Chairwoman Howard recognized Bob Haley from the College Foundation of North Carolina who stated that funds not used for a particular child could be used on another child or could be withdrawn for other purposes but would be subject to tax and a 10% penalty. Representative Luebke was then recognized and sent forth an amendment (see **attachment 9**) that provides a January 1, 2011, sunset on the bill. Representative

Luebke then moved for the adoption of the amendment. As there was no further debate on the amendment, Chairwoman Howard called the motion to a vote and the amendment was adopted. Representative Ross was then recognized and moved for a favorable report to the proposed committee substitute, with the amendment incorporated into the bill, and an unfavorable report to the original bill. As there was no further debate, Chairwoman Howard called the motion to a vote and it carried without objection.

The final bill considered by the Committee was **HB 2047 – VIDEO SERVICE COMPETITION ACT** (see **attachment 10**). Chairwoman Howard recognized Representative Wainwright who moved for the adoption of the proposed committee substitute for the Committee's consideration. The motion was adopted. Cindy Avrette was then recognized and gave a section by section explanation of the proposed committee substitute. Following the explanation Representative Wainwright was recognized and sent forth an amendment (see **attachment 11**) and moved for its adoption. He then explained that the amendment raises the cost of filing a report with the Secretary of State's office from $20 to $200. The amendment also makes other small changes throughout the bill that are intended to give the bill additional clarity. As there was no further discussion on the amendment, Chairwoman Howard called the motion to a vote and the amendment was adopted.

Representative Glazier was then recognized and sent forth an amendment (see **attachment 12**) and moved for its adoption. He explained that the amendment seeks to prevent patterns of discrimination from occurring by video program businesses by allowing a court to terminate the businesses contract within the state. Representative McComas then stated that the amendment would make the penalty for discrimination too harsh. Chairwoman Howard then recognized Representative Wainwright who stated that this penalty would have the effect of decreasing competition in the market and would actually be unfriendly to consumers. Representative Daughtridge was recognized and stated that the amendment makes no reference to egregious violations of the bill and would allow any judge to terminate a video programming business for a single violation. Representative Luebke was then recognized and urged the Committee to support the amendment offered by Representative Glazier as the additional consumer protection was needed. Seeing no further discussion, Chairwoman Howard called the motion to adopt the Glazier amendment to a vote and the amendment failed.

Chairwoman Howard then recognized Representative Bordsen who sent forth an amendment (see **attachment 13**) and moved for its adoption. Representative Bordsen then explained that the amendment requires 5% of the bandwidth for the public interest to be set aside at the point on the entire system that possesses the maximum bandwidth. Representative McComas was then recognized and stated that some companies would be at a technical disadvantage because of this requirement. He then sent forth a perfecting amendment (see **attachment 14**) which would ensure that parity exist between the different types of video programming companies. Chairwoman Howard then displaced the Bordsen amendment while the perfecting amendment was drafted.

Representative Carney was then recognized and sent forth an amendment (see **attachment 15**) and moved for its adoption. Representative Carney explained that her amendment changed the maximum amount that can be granted to a local PEG channel from $20,000 to $25,000. As there was no further debate, Chairwoman Howard called the motion to adopt the Carney amendment to a vote and the amendment was adopted.

Representative Ross was then recognized to send forth an amendment (see **attachment 16**) and moved for its adoption. She explained that the amendment would require restitution to be paid by video programming companies to consumers who are not being provided adequate service. The

amendment also requires video programming companies to establish a customer support center in each municipality where the company provides service and sets forth various requirements for businesses in handling customer service. Representative McComas was then recognized and urged the Committee to oppose the amendment because it would place too large of a burden on video programming businesses since they would be required to have a customer service center in every municipality. Representative Daughtridge was recognized and stated that this amendment is not needed since competition will urge businesses to provide good customer service. Chairwoman Howard then recognized Representative Blust who urged the Committee to not support the amendment. Representative Womble was then recognized by Chairwoman Howard and expressed his support for the consumer protections provided by the amendment and urged his fellow Committee members to do support the measure. Seeing no further discussion on the amendment, Chairwoman Howard then called the motion to adopt the Ross amendment to a vote and the amendment failed.

As the Committee's time had then expired, Chairwoman Howard adjourned the meeting at 9:54 am.

Respectfully submitted,

Representative Julia Howard
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:

1. Agenda
2. Visitor Registration Sheet
3. House Bill 1820 (and related materials)
4. House Bill 1881 (and related materials)
5. House Bill 1913 (and related materials)
6. House Bill 1989 (and related materials)
7. House Bill 1992 (and related materials)
8. House Bill 770 (and related materials)
9. Luebke Amendment on House Bill 770 – **Adopted**
10. House Bill 2047 (and related materials)
11. Wainwright amendment on House Bill 2047 – **Adopted**
12. Glazier amendment on House Bill 2047 – **Failed**
13. Bordsen amendment on House Bill 2047 – **Displaced**
14. McComas perfecting amendment to Bordsen amendment on House Bill 2047 – **Pending**
15. Carney amendment on House Bill 2047 – **Adopted**
16. Ross amendment on House Bill 2047 – **Failed**

North Carolina General Assembly

House Committee on Finance

Minutes

~

June 6, 2006

The House Committee on Finance met on Tuesday, June 6, 2006 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Alexander, Gibson, Howard, Luebke, McComas and Wainwright; Vice-Chairs Daughtridge, Hill, Ross, Weiss, and Womble; and Representatives B. Allen, Blackwood, Blust, Bordsen, Capps, Carney, Dockham, England, Faison, Fisher, Folwell, Glazier, Goforth, Hackney, Harrell, Holliman, Jones, Lewis, Lucas, McGee, Rayfield, Underhill, Walend and Wiley. Also present were Sergeant-at-Arms Nell Casper, Fred Hines, Marvin Lee, and Dusty Rhodes. Staff persons present included Cindy Avrette, Rodney Bizzell, Brenna Erford, Canaan Huie, Linda Millsaps, and Martha Walston. The Agenda and Visitor Registration Sheet are attached and incorporated into these minutes as **attachments 1 and 2.**

Chairwoman Howard called the meeting to order at 8:30 am and recognized the six (6) pages present: (1) Phyllis King of Halifax County, sponsored by Representative Jones; (2) Katie Kapp of Wake County, sponsored by Representative Ross; (3) Olivia Hyatt of Union County, sponsored by Representative Blackwood; (4) Molly Edwards of Beaufort County, sponsored by Speaker Black; (5) Taylor Cave of Davie County, sponsored by Representative Howard; and (6) Laura Vanhey of Davie County, sponsored by Representative Howard.

The first bill under the Committee's consideration was **HB 1820 – STEM SATELLITE ANNEXATIONS** (see **attachment 3**). Chairwoman Howard first recognized Martha Walston of Fiscal Research to explain the bill. She stated that the bill exempts the town of Stem from the requirement for satellite annexation that prohibits the total area of satellite annexation from being more than 10% of the primary corporate limits of the annexing city. Following the explanation, Representative Alexander was recognized and moved that House Bill 1820 be given a favorable report by the Committee. Seeing no further discussion, Chairwoman Howard called the motion to a vote and it carried by consent.

The next bill considered by the Committee was **HB 1881 – PINK HILL DEANNEXATION** (see **attachment 4**). Martha Walston was again recognized to explain the bill and stated that the bill de-annexes a lot from the Town of Pink Hill. Chairwoman Howard then recognized Representative Holliman who moved that House Bill 1881 be given a favorable report by the Committee. As there was no further debate, Chairwoman Howard called the motion to a vote and it carried without objection.

Chairwoman Howard then recognized Martha Walston again to explain **HB 1913 – RED CROSS DEANNEXATION** (see **attachment 5**). She noted that this bill had been given a favorable report in the House Local Government II Committee. Mrs. Walston also explained that

the bill de-annexes two tracts of land from the corporate limits of the town of Red Cross and reverts the land back to the previous Stanly County zoning designation. Chairwoman Howard then recognized Representative Hill who moved that House Bill 1913 be given a favorable report by the Committee. Seeing no further discussion, Chairwoman Howard called the motion to a vote and it carried by consent.

The next bill considered by the Committee was **HB 1989 – PRINCETON/SMITHFIELD SATELLITE ANNEXATIONS** (see **attachment 6**). Chairwoman Howard recognized Martha Walston to explain the content of the bill. Mrs. Walston explained that this bill removes the 10% cap on satellite annexations for the towns of Princeton and Smithfield. Following the explanation, Chairwoman Howard recognized Representative Alexander who moved that House Bill 1989 be given a favorable report by the Committee. As there was no further debate, Chairwoman Howard called the motion to a vote and it carried without objection.

Chairwoman Howard then recognized Representative Alexander who moved for the adoption of the proposed committee substitute for the Committee's consideration for **HB 1992 – SHALLOTTE ANNEXATION** (see **attachment 7**). The motion was adopted. Chairwoman Howard then recognized Mrs. Walston of Fiscal Research again to explain the bill. Mrs. Walston explained that the bill annexes two parcels of land to the corporate boundaries of the Town of Shallotte. Chairwoman Howard then recognized Representative Hill, the bill sponsor, who moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. Seeing no further discussion, Chairwoman Howard called the motion to a vote and it carried by consent.

The following bill considered by the Committee was **HB 770 – PARENTAL SAVINGS TRUST FUND TAX DEDUCTION** (see **attachment 8**). Chairwoman Howard first recognized Representative Luebke who moved for the adoption of the proposed committee substitute for the Committee's consideration. The motion was adopted. Representative Dickson was then recognized to explain the bill. She stated that the bill would allow a deduction from taxable income of $5,000 for an individual taxpayer placing money in a Parental Savings Trust Fund. An amount of $10,000 would be allowed for a couple filing a joint return. Chairwoman Howard then recognized Representative Ross who spoke in support of the bill and urged the members of the Committee to also support the bill. Representative Luebke was recognized and asked if the $10,000 deduction would be allowed each year or just over the lifetime of the taxpayer. Canaan Huie of Bill Drafting was recognized and said that the $10,000 deduction is allowed each year in the way the bill is currently written. Chairwoman Howard then recognized Representative Hackney who wanted more information on the fiscal impact of the bill. In response, Brenna Erford of Fiscal Research noted that the bill would have a $2 million impact the first year and a $2.3 million impact the second year.

Representative Gibson was then recognized and said that North Carolina is now at a comparative disadvantage with other states in this area and this bill would begin to allow the state to have similar college savings plans to most other states. Representative Luebke then stated that some couples would be able to receive a deduction of up to $20,000 under the provisions of the bill. Mr. Huie of Bill Drafting then detailed the ways a couple could potentially receive a deduction of $20,000 under the bill. Chairwoman Howard then recognized Representative Luebke who urged the Committee to add a sunset to the bill. Representative Wiley was then recognized and asked about what a parent would do if his or her child did not go to college. Chairwoman Howard recognized Bob Haley from the College Foundation of North Carolina who stated that funds not used for a particular child could be used on another child or could be withdrawn for other purposes but would be subject to tax and a 10% penalty. Representative Luebke was then recognized and sent forth an amendment (see **attachment 9**) that provides a January 1, 2011, sunset on the bill. Representative

Luebke then moved for the adoption of the amendment. As there was no further debate on the amendment, Chairwoman Howard called the motion to a vote and the amendment was adopted. Representative Ross was then recognized and moved for a favorable report to the proposed committee substitute, with the amendment incorporated into the bill, and an unfavorable report to the original bill. As there was no further debate, Chairwoman Howard called the motion to a vote and it carried without objection.

The final bill considered by the Committee was **HB 2047 – VIDEO SERVICE COMPETITION ACT** (see **attachment 10**). Chairwoman Howard recognized Representative Wainwright who moved for the adoption of the proposed committee substitute for the Committee's consideration. The motion was adopted. Cindy Avrette was then recognized and gave a section by section explanation of the proposed committee substitute. Following the explanation Representative Wainwright was recognized and sent forth an amendment (see **attachment 11**) and moved for its adoption. He then explained that the amendment raises the cost of filing a report with the Secretary of State's office from $20 to $200. The amendment also makes other small changes throughout the bill that are intended to give the bill additional clarity. As there was no further discussion on the amendment, Chairwoman Howard called the motion to a vote and the amendment was adopted.

Representative Glazier was then recognized and sent forth an amendment (see **attachment 12**) and moved for its adoption. He explained that the amendment seeks to prevent patterns of discrimination from occurring by video program businesses by allowing a court to terminate the businesses contract within the state. Representative McComas then stated that the amendment would make the penalty for discrimination too harsh. Chairwoman Howard then recognized Representative Wainwright who stated that this penalty would have the effect of decreasing competition in the market and would actually be unfriendly to consumers. Representative Daughtridge was recognized and stated that the amendment makes no reference to egregious violations of the bill and would allow any judge to terminate a video programming business for a single violation. Representative Luebke was then recognized and urged the Committee to support the amendment offered by Representative Glazier as the additional consumer protection was needed. Seeing no further discussion, Chairwoman Howard called the motion to adopt the Glazier amendment to a vote and the amendment failed.

Chairwoman Howard then recognized Representative Bordsen who sent forth an amendment (see **attachment 13**) and moved for its adoption. Representative Bordsen then explained that the amendment requires 5% of the bandwidth for the public interest to be set aside at the point on the entire system that possesses the maximum bandwidth. Representative McComas was then recognized and stated that some companies would be at a technical disadvantage because of this requirement. He then sent forth a perfecting amendment (see **attachment 14**) which would ensure that parity exist between the different types of video programming companies. Chairwoman Howard then displaced the Bordsen amendment while the perfecting amendment was drafted.

Representative Carney was then recognized and sent forth an amendment (see **attachment 15**) and moved for its adoption. Representative Carney explained that her amendment changed the maximum amount that can be granted to a local PEG channel from $20,000 to $25,000. As there was no further debate, Chairwoman Howard called the motion to adopt the Carney amendment to a vote and the amendment was adopted.

Representative Ross was then recognized to send forth an amendment (see **attachment 16**) and moved for its adoption. She explained that the amendment would require restitution to be paid by video programming companies to consumers who are not being provided adequate service. The

amendment also requires video programming companies to establish a customer support center in each municipality where the company provides service and sets forth various requirements for businesses in handling customer service. Representative McComas was then recognized and urged the Committee to oppose the amendment because it would place too large of a burden on video programming businesses since they would be required to have a customer service center in every municipality. Representative Daughtridge was recognized and stated that this amendment is not needed since competition will urge businesses to provide good customer service. Chairwoman Howard then recognized Representative Blust who urged the Committee to not support the amendment. Representative Womble was then recognized by Chairwoman Howard and expressed his support for the consumer protections provided by the amendment and urged his fellow Committee members to do support the measure. Seeing no further discussion on the amendment, Chairwoman Howard then called the motion to adopt the Ross amendment to a vote and the amendment failed.

As the Committee's time had then expired, Chairwoman Howard adjourned the meeting at 9:54 am.

Respectfully submitted,

Representative Julia Howard
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:

1. Agenda
2. Visitor Registration Sheet
3. House Bill 1820 (and related materials)
4. House Bill 1881 (and related materials)
5. House Bill 1913 (and related materials)
6. House Bill 1989 (and related materials)
7. House Bill 1992 (and related materials)
8. House Bill 770 (and related materials)
9. Luebke Amendment on House Bill 770 – **Adopted**
10. House Bill 2047 (and related materials)
11. Wainwright amendment on House Bill 2047 – **Adopted**
12. Glazier amendment on House Bill 2047 – **Failed**
13. Bordsen amendment on House Bill 2047 – **Displaced**
14. McComas perfecting amendment to Bordsen amendment on House Bill 2047 – **Pending**
15. Carney amendment on House Bill 2047 – **Adopted**
16. Ross amendment on House Bill 2047 – **Failed**

AGENDA

House Finance Committee

ATTACHMENT 1

Tuesday, June 6, 2006
8:30 a.m.
Room 544 LOB
Chaired by: Rep. Howard

Co-Chairs

Representative Martha Alexander
Representative Pryor Gibson
Representative Julia Howard

Representative Paul Luebke
Representative Danny McComas
Representative William Wainwright

Call to Order

Introduction of Pages

Bills:

HB 770 **PARENTAL SAVINGS TRUST FUND TAX DEDUCTION.-AB**
Rep. Dickson

HB 1820 **STEM SATELLITE ANNEXATIONS** *Rep. Crawford*

HB 1881 **PINK HILL DEANNEXATION** *Reps. LaRoque & Wainwright*

HB 1913 **RED CROSS DEANNEXATION** *Rep. Almond*

HB 1989 **PRINCETON/SMITHFIELD SATELLITE ANNEXATIONS**
Reps. Langdon & Daughtry

HB 1992 **SHALLOTTE ANNEXATION** *Rep. Hill*

HB 2047 **VIDEO SERVICE COMPETITION ACT**
Reps. Carney, Luebke, McComas, & Wainwright

Adjournment

ATTACHMENT 2

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 6, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Daniel Long	NCUC Staff
Bridget Paschal	NCUC Staff
Lemuel W. Hinton	Staff NCUC
David Barnes	Poyner & Spruill
Jim Johnson	
Stephanie Dorko	Charlotte Chamber
Henry Hutaff	N.C.B.A.
Randy Heser	TWC
Katherine Davis	ElectriCities
Ed Turlington	BPM HL
Tom Adams	Time Warner Cable
M. Lunn	NCSA
Nanci Alexander	Poyner & Spruill

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 6, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jack Stanley	Time Warner Cable - Greensboro
Kyle Wallace	Time Warner Cable - Raleigh
Doris Doris	City of Charlotte
Courtney Crowder	Capstrat
Bill Scoggin	KCLH
Cam Cree	BPMHC
Betty Turner	Bank of America
Tonola Brown-Bland	City of Greensboro
Linda Miles	City Attorney, City of Greensboro
Ellis Hankins	NCLM
Jerry Kaplan	NCLHW
Mike Ingram	ACB

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 6, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Allen Page	Freedom Works
Charles Irvin, JR.	Freedom Works
Mary Ely Davis	Freedom Works
Nancy Jones	Freedom Works
Roy Hoflin	Freedom Works
Kathy Hartkopf	Freedom Works
Doris Weaver	AWA
Tom Coley	CWA
[illegible]	NCATL
Josh Stein	NCAGO
Rodney Maddox	NC Secretary of State

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Haley Montgomery	SOS
Robin Staudt	Orange County FreedomWorks
BWelsh	AARP
Shirl Mel	SMC
Bob Gillam	Public Staff - NCUC
Jeff Wolfe	Daily Bulletin
Byron Nelson	Nelson & Associates
[illegible]	BellSouth
Karl Knapp	DOR
Veronica Carrington	Rep. Wainwright Intern
Nancy Pomeranz	DOR

VISITOR REGISTRATION SHEET

Name of Committee _____ Date _____

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sharon Miller	CUCA
Anna Mitchell	NC DOR
Andy Sabol	NC DOR
Jim Blackburn	NC Association of County Commissioners
Lisa Martin	NC Home Builders
Greg Mchud	NCAGO
Dave Hyman	CWSJ
Mary Beason	Capitol Press
Jim Kerr	NCUC
Matt Latvis	NCGA
R. Paul Wilms	NCHBA
Dorothy Landrigan	TCM
Loki Anastasiou	LAOA

VISITOR REGISTRATION SHEET

Name of Committee _____ Date _____

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Roz Saiff	NCCLC
Herb Crenshaw	BellSouth
Stan Pace	Verizon
BRIAN LEWIS	Covenant W/ NC's Children
Butch Gwaltney	NCBA
Cathy Higgins	Gov Office
Jackson Stancil	Rep. J.H. Langdon's office
Deborah Rowe	NC PNA / NCALHD
Kyle Hazel	Gov's office
Robert Bennink	NCUC Staff
Rob Thompson	NCSBC
Fred Baggett	High Point
Melissa Reed	NARAL

VISITOR REGISTRATION SHEET

Name of Committee _____ Date _____

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Margaret Webb	Girl Scouts
James L. Forte	OSA
Lynn Bonner	NSO
Kellie Visker	AARP
Mary Bethel	AARP
[signature]	CHF

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 6, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Connie Wilson	SSI
Ben Matthews	NCSEA
Lee Hall	NCCLH
Dana Simpson	Smith Anders
Bob Hawkins	
P Hopper	Kennedy Covington
Leanne Winner	NCSBA
Jack McCoy	Gov Office
Rebecca Troutman	NCACC

CORRECTED NOTICE:
HB 1891 – REMOVED

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

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

DAY & DATE: **Tuesday, June 6, 2006**

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

LOCATION: **Room 544, LOB**

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

HB 770 – PARENTAL SAVINGS TRUST FUND TAX DEDUCTION.-AB – Rep. Dickson

HB 1820 – STEM SATELLITE ANNEXATIONS – Rep. Crawford

1881 – PINK HILL DEANNEXATION – Reps. LaRoque & Wainwright

~~**HB 1891 – CLARIFY ADDITIONAL GROSS PREMIUMS TAX – Reps. Wainwright, Luebke, Church, & Hill**~~

HB 1913 – RED CROSS DEANNEXATION – Rep. Almond

HB 1989 – PRINCETON/SMITHFIELD SATELLITE ANNEXATIONS – Reps. Langdon & Daughtry

HB 1992 – SHALLOTTE ANNEXATION – Rep. Hill

HB 2047 – VIDEO SERVICE COMPETITION ACT – Reps. Carney, Luebke, McComas, & Wainwright

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

I hereby certify this notice was filed by the committee clerk at the following offices at **3:40 p.m.** on **June 5, 2006**:

X Principal Clerk
X Reading Clerk - House Chamber

on A. Cannon (Committee Clerk)

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

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

DAY & DATE: **Tuesday, June 6, 2006**

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

LOCATION: **Room 544, LOB**

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

HB 770 – PARENTAL SAVINGS TRUST FUND TAX DEDUCTION.-AB – Rep. Dickson

HB 1820 – STEM SATELLITE ANNEXATIONS – Rep. Crawford

HB 1881 – PINK HILL DEANNEXATION – Reps. LaRoque & Wainwright

HB 1891 – CLARIFY ADDITIONAL GROSS PREMIUMS TAX – Reps. Wainwright, Luebke, Church, & Hill

1913 – RED CROSS DEANNEXATION – Rep. Almond

HB 1989 – PRINCETON/SMITHFIELD SATELLITE ANNEXATIONS – Reps. Langdon & Daughtry

HB 1992 – SHALLOTTE ANNEXATION – Rep. Hill

HB 2047 – VIDEO SERVICE COMPETITION ACT – Reps. Carney, Luebke, McComas, & Wainwright

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

I hereby certify this notice was filed by the committee clerk at the following offices at **12:40 p.m.** on **June 1, 2006**:

X Principal Clerk
X Reading Clerk - House Chamber

Jason A. Cannon (Committee Clerk)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 1820

Short Title:	Stem Satellite Annexations.	(Local)
Sponsors:	Representative Crawford.	
Referred to:	Local Government I.	

May 10, 2006

A BILL TO BE ENTITLED

AN ACT REMOVING THE CAP ON SATELLITE ANNEXATIONS FOR THE TOWN OF STEM.

The General Assembly of North Carolina enacts:

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

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

...

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

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

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

HOUSE BILL 1820:
Stem Satellite Annexations

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 4, 2006
Introduced by:	Rep. Crawford	**Summary by:**	Martha Walston
Version:	First Edition		Committee Counsel

SUMMARY: ***House Bill 1820 is a local bill that would exempt the town of Stem from the requirement for satellite annexation that the area to be annexed, when added to the area within all other satellite corporate limits, may not exceed 10% of the area within the primary corporate limits of the annexing city. House Bill 1820 was given a favorable report in House Local Government I.***

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

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

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

BILL ANALYSIS: House Bill 1820 would permanently exempt the town of Stem from the 5th requirement, which requires that the proposed area for satellite annexation, when added to the area within all other satellite corporate limits, not exceed 10% of the area within the primary corporate limits of the annexing city.

The purpose of the 5th requirement is designed to further the legislative goal of not allowing annexations to undermine the notion of a city as a single, contiguous, and compact entity. In practice, however, the standard has proved to be a problem for many smaller cities, because one large development by itself may easily exceed the 10% limit. Because of this, the General Assembly has excepted a significant number of cities and towns (at least 63) from this 10% rule by local act.

H1820e1-SMLA

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

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☐ Committee Substitute for

HB 1820 A BILL TO BE ENTITLED AN ACT REMOVING THE CAP ON SATELLITE ANNEXATIONS FOR THE TOWN OF STEM.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 1881

Short Title:	Pink Hill Deannexation.	(Local)
Sponsors:	Representatives LaRoque and Wainwright (Primary Sponsors).	
Referred to:	Local Government II, if favorable, Finance.	

May 11, 2006

A BILL TO BE ENTITLED

AN ACT REMOVING CERTAIN DESCRIBED PROPERTY FROM THE TOWN OF PINK HILL.

The General Assembly of North Carolina enacts:

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

The property of Jeffery B. Turner and wife, Linda H. Turner, being further described as: Lot No. 1 as shown upon the map entitled "Survey For Whitford Hill, Pink Hill Township, Lenoir County, North Carolina," which said map appears of record in Cabinet 2, Slide 84, Page 168, Lenoir County Registry. Deed dated October 15, 1984, recorded in Book 813, page 645, Lenoir County Registry.

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

HOUSE BILL 1881:
Pink Hill Deannexation

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 5, 2006
Introduced by:	Reps. LaRoque, Wainwright	**Summary by:**	Martha Walston
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 1881 de-annexes a lot from the corporate limits of the town of Pink Hill. The act is effective when it becomes law. The bill was given a favorable report in House Local Government II.

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

BILL ANALYSIS: House Bill 1881 de-annexes a lot from the corporate limits of the town of Pink Hill. The owners of the property requested the de-annexation, and the Pink Hill Board of Commissioners approved the request.

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

H1881e1-SMLA

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☐ Committee Substitute for

HB 1881 A BILL TO BE ENTITLED AN ACT REMOVING CERTAIN DESCRIBED PROPERTY FROM THE TOWN OF PINK HILL.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 1913

Committee Substitute Favorable 5/31/06

Short Title: Red Cross Deannexation. (Local)

Sponsors:

Referred to:

May 15, 2006

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

TRACT I (Tax record number 36975):

Beginning at the northwest corner of the property having tax record number 36975, thence in a northeasterly direction (N 43' 03' 56" E) along the northwestern boundary of the above said property for a distance of 1,797 feet to the northeastern corner of the above said property, said corner also being located on the centerline of Hilltop Road, thence in a southeasterly direction with the centerline of Hilltop Road to the southeastern corner of the above said property, said corner also being located on the centerline of Hilltop Road, thence in a southwesterly direction (S 55' 31' 50" W) along the southeastern boundary of the above said property for a distance of 1,653 feet to the southwestern corner of the above said property, thence in a northwestern direction (N 34' 42' 53" W) along the southwestern boundary of the above said property for a distance of 200 feet to the northwestern corner of the above said property, said corner also being the point of beginning.

TRACT II (Tax record number 5819):

Beginning at the northwest corner of the property having tax record number 5819, thence in a northeasterly direction (N 55' 31' 50" E) along the northwestern boundary of the above said property for a distance of 1,653 feet to a point, said point is the intersect of the northwestern property line of the above said property and the centerline of Hilltop Road, thence in a southeasterly direction for a distance of 337 feet and along the centerline of Hilltop Road to a point, said point is the intersect of the southeastern boundary of the above said property and the centerline of Hilltop Road, thence in a southwesterly direction (S 54' 22' 00" W) along the southeastern boundary of the above

said property to the southeastern corner of the above said property, thence in a northwestern direction (N 34' 42' 53" W) along the southwestern boundary of the above said property for a distance of 357 feet to the northwestern corner of the above said property, said corner also being the point of beginning.

SECTION 2. The property described in Section 1 of this act shall revert to the zoning designation established by Stanly County prior to its annexation by the Town of Red Cross, and shall continue under the planning and zoning jurisdiction of Stanly County.

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

HOUSE BILL 1913:
Red Cross Deannexation

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 5, 2006
Introduced by:	Rep. Almond	**Summary by:**	Martha Walston
Version:	Second Edition		Committee Counsel

SUMMARY: House bill 1913 de-annexes two tracts from the corporate limits of the town of Red Cross. The 2nd edition provides that the de-annexed property will revert to the previous Stanly County zoning designation and will be subject to Stanly County's planning and zoning jurisdiction. The 2nd edition was given a favorable report in House Local Government II.

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

BILL ANALYSIS: House Bill 1913 de-annexes two tracts from the corporate limits of the town of Red Cross and provides that these two tracts will revert to the previous Stanly County zoning designation and will be subject to Stanly County's planning and zoning jurisdiction. The two tracts were erroneously annexed to the town of Red Cross.

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

H1913e2-SMLA

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☐ Committee Substitute for

HB 1913 A BILL TO BE ENTITLED AN ACT REMOVING CERTAIN DESCRIBED PROPERTY FROM THE CORPORATE LIMITS OF THE TOWN OF RED CROSS.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 1989

Committee Substitute Favorable 5/31/06

Short Title: Princeton/Smithfield Satellite Annexations. (Local)

Sponsors:

Referred to:

May 16, 2006

A BILL TO BE ENTITLED

AN ACT REMOVING THE CAP ON SATELLITE ANNEXATIONS FOR THE TOWNS OF PRINCETON AND SMITHFIELD.

The General Assembly of North Carolina enacts:

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

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

...

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

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

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

HOUSE BILL 1989:
Princeton/Smithfield Satellite Annexations

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 5, 2006
Introduced by:	Reps. Langdon, Daughtry	**Summary by:**	Martha Walston
Version:	Second Edition		Committee Counsel

SUMMARY: ***House Bill 1989 is a local bill that would exempt the towns of Princeville and Smithfield from the requirement for satellite annexation that the area to be annexed, when added to the area within all other satellite corporate limits, may not exceed 10% of the area within the primary corporate limits of the annexing town. House bill 1989 2nd edition was given a favorable report in House Local Government II. The 2nd edition adds Smithfield to the list of towns to which the satellite annexation cap does not apply.***

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

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

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

BILL ANALYSIS: House Bill 1989 would permanently exempt the towns of Princeton and Smithfield from the 5th requirement, which requires that the proposed area for satellite annexation, when added to the area within all other satellite corporate limits, not exceed 10% of the area within the primary corporate limits of the annexing city.

The purpose of the 5th requirement is designed to further the legislative goal of not allowing annexations to undermine the notion of a city as a single, contiguous, and compact entity. In practice, however, the standard has proved to be a problem for many smaller cities, because one large development by itself may easily exceed the 10% limit. Because of this, the General Assembly has excepted a significant number of cities and towns (at least 63) from this 10% rule by local act.

H1989e2-SMLA

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

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☐ Committee Substitute for

HB 1989 A BILL TO BE ENTITLED AN ACT REMOVING THE CAP ON SATELLITE ANNEXATIONS FOR THE TOWNS OF PRINCETON AND SMITHFIELD.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1992*
PROPOSED COMMITTEE SUBSTITUTE H1992-PCS50700-RE-1

Short Title: Shallotte Annexation. (Local)

Sponsors:

Referred to:

May 16, 2006

A BILL TO BE ENTITLED

AN ACT ADDING CERTAIN DESCRIBED PROPERTIES TO THE CORPORATE BOUNDARIES OF THE TOWN OF SHALLOTTE.

The General Assembly of North Carolina enacts:

SECTION 1. The following described properties are added to the corporate boundaries of the Town of Shallotte:

RIVERS EDGE GOLF CLUB AND PLANTATION

PARCEL A

'Beginning at an iron rod in the West R/W of Copas Road located North 20 degrees 32 minutes 38 seconds West a distance of 624.67 feet from a PK nail in the center-line intersection of Copas Road SW and Lake Shore Drive SW, thence from said beginning point South 70 degrees 38 minutes 45 seconds West for a distance of 468.68 feet to an iron rod, thence South 63 degrees 12 minutes 37 seconds West for a distance of 50.85 feet to an iron rod, thence South 66 degrees 17 minutes 49 seconds West for a distance of 188.30 feet to an iron rod, thence North 66 degrees 41 minutes 17 seconds West for a distance of 77.31 feet to an iron rod, thence South 71 degrees 11 minutes 37 seconds West for a distance of 45.45 feet to an iron rod, thence South 55 degrees 45 minutes 25 seconds West for a distance of 744.40 feet, to an iron rod, thence South 51 degrees 29 minutes 26 seconds West for a distance of 185.14 feet to an iron rod, thence South 56 degrees 27 minutes 00 seconds West for a distance of 241.03 feet to an iron rod, thence North 39 degrees 20 minutes 38 seconds West for a distance of 139.09 feet to an iron rod, thence North 57 degrees 22 minutes 08 seconds West for a distance of 52.73 feet to an iron rod, thence North 53 degrees 36 minutes 58 seconds West for a distance of 155.89 feet to an iron rod, thence North 36 degrees 31 minutes 03 seconds West for a distance of 346.31 feet to an iron rod, thence North 69 degrees 19 minutes 12 seconds East for a distance of 191.50 feet to an iron rod, thence North 69 degrees 21 minutes 44 seconds East for a distance of 499.95 feet to an iron rod, thence North 69 degrees 21 minutes 35 seconds East for a distance of 499.53 feet to an iron rod, thence North 69

degrees 26 minutes 17 seconds East for a distance of 336.27 feet to an iron rod, thence North 69 degrees 27 minutes 11 seconds East for a distance of 406.65 feet to an iron rod, thence South 21 degrees 51 minutes 24 seconds East for a distance of 200.09 feet to an iron rod, thence North 69 degrees 25 minutes 00 seconds East for a distance of 250.54 feet to an iron rod in the west R/W of Copas Rd, thence with said R/W South 23 degrees 28 minutes 26 seconds East for a distance of 201.23 feet to the place and point of beginning, containing 21.0 acres, more or less.'

RIVERS EDGE GOLF CLUB AND PLANTATION

PARCEL B

'Beginning at an iron rod in the West R/W of Copas Road located North 24 degrees 26 minutes 18 seconds West a distance of 189.47 feet from a PK nail in the center-line intersection of Copas Road SW and Lake Shore Drive SW, thence from said beginning point South 75 degrees 38 minutes 54 seconds West for a distance of 136.41 feet to an iron rod, thence South 63 degrees 22 minutes 21 seconds West for a distance of 440.00 feet to an iron rod, thence South 57 degrees 52 minutes 21 seconds West for a distance of 195.21 feet to an iron rod, thence South 56 degrees 19 minutes 56 seconds West for a distance of 101.35 feet to an iron rod, thence South 54 degrees 25 minutes 49 seconds West for a distance of 150.65 feet to an iron rod, thence South 45 degrees 37 minutes 06 seconds West for a distance of 121.53 feet to an iron rod, thence South 58 degrees 46 minutes 59 seconds West for a distance of 114.92 feet to an iron rod, thence South 58 degrees 30 minutes 22 seconds West for a distance of 23.83 feet to an iron rod, thence North 56 degrees 55 minutes 27 seconds West for a distance of 284.86 feet to an iron rod, thence North 44 degrees 10 minutes 16 seconds East for a distance of 773.53 feet to an iron rod, thence North 09 degrees 55 minutes 10 seconds East for a distance of 66.77 feet to an iron rod, thence North 66 degrees 10 minutes 41 seconds East for a distance of 186.95 feet to an iron rod, thence North 63 degrees 02 minutes 45 seconds East for a distance of 49.29 feet to an iron rod, thence North 70 degrees 38 minutes 45 seconds East for a distance of 307.01 feet to an iron rod, thence North 70 degrees 34 minutes 11 seconds East for a distance of 161.77 feet to an iron rod in the west R/W of Copas Road, thence with said R/W South 28 degrees 29 minutes 54 seconds East for a distance of 8.70 feet to an iron rod, thence South 22 degrees 18 minutes 39 seconds East for a distance of 98.04 feet to an iron rod, thence leaving said R/W South 68 degrees 37 minutes 37 seconds West for a distance of 160.19 feet to an iron rod, thence South 20 degrees 05 minutes 11 seconds East for a distance of 90 feet to an iron rod, thence North 68 degrees 39 minutes 21 seconds East for a distance of 160.18 feet to an iron rod in the west R/W of Copas Rd, thence with said R/W South 17 degrees 03 minutes 16 seconds East for a distance of 90.97 feet to an iron rod, thence South 15 degrees 51 minutes 24 seconds East for a distance of 128.79 feet to the place and point of beginning, containing 11.96 acres, more or less.'

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

HOUSE BILL 1992*

Short Title:	Shallotte Annexation.	(Local)
Sponsors:	Representative Hill.	
Referred to:	Local Government I, if favorable, Finance.	

May 16, 2006

A BILL TO BE ENTITLED

AN ACT ADDING CERTAIN DESCRIBED PROPERTY TO THE CORPORATE BOUNDARIES OF THE TOWN OF SHALLOTTE.

The General Assembly of North Carolina enacts:

SECTION 1. The following described property is added to the corporate boundaries of the Town of Shallotte:

Beginning at an iron rod in the West R/W of Copas Road located North 20 degrees 32 minutes 38 seconds West a distance of 624.67 feet from a PK nail in the center-line intersection of Copas Road SW and Lake Shore Drive SW, thence from said beginning point South 70 degrees 38 minutes 45 seconds West for a distance of 468.69 feet to an iron rod, thence South 63 degrees 12 minutes 37 seconds West for a distance of 50.85 feet, to an iron rod, thence South 66 degrees 17 minutes 49 seconds West for a distance of 188.30 feet to an iron rod, thence North 66 degrees 41 minutes 17 seconds West for a distance of 77.31 feet to an iron rod, thence South 71 degrees 11 minutes 37 seconds West for a distance of 45.45 feet to an iron rod, thence South 55 degrees 45 minutes 25 seconds West for a distance of 744.40 feet, to an iron rod, thence South 51 degrees 29 minutes 26 seconds West for a distance of 185.14 feet to an iron rod, thence South 56 degrees 27 minutes 00 seconds West for a distance of 241.03 feet to an iron rod, thence North 39 degrees 20 minutes 38 seconds West for a distance of 139.09 feet to an iron rod, thence North 57 degrees 22 minutes 08 seconds West for a distance of 52.73 feet to an iron rod, thence North 53 degrees 36 minutes 58 seconds West for a distance of 155.89 feet to an iron rod, thence North 36 degrees 31 minutes 03 seconds West for a distance of 346.31 feet to an iron rod, thence North 69 degrees 19 minutes 12 seconds East for a distance of 191.50 feet to an iron rod, thence North 69 degrees 21 minutes 44 seconds East for a distance of 499.95 feet to an iron rod, thence North 69 degrees 21 minutes 35 seconds East for a distance of 499.53 feet to an iron rod, thence North 69 degrees 26 minutes 17 seconds East for a distance of 336.27 feet to an iron rod, thence North 69 degrees 27 minutes 11 seconds East for a distance of 406.65 feet to an iron rod, thence South 21 degrees 51 minutes 24 seconds East for a distance of 200.09 feet to

an iron rod, thence North 69 degrees 25 minutes 00 seconds East for a distance of 250.54 feet to an iron rod in the west R/W of Copas Rd, thence with said R/W South 23 degrees 28 minutes 26 seconds East for a distance of 201.23 feet to the place and point of beginning. Together with and subject to covenants, easements, and restrictions of record. The property contains 21.0 acres, more or less.

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

HOUSE BILL 1992:
Shallotte Annexation

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 6, 2006
Introduced by:	Rep. Hill	**Summary by:**	Judy Collier
Version:	PCS to First Edition H1992-CSRE		Research Assistant

SUMMARY: ***The Proposed Committee Substitute for House Bill 1992 would annex certain described property into the Town of Shallote.***

[As introduced, this bill was identical to S1434, as introduced by Sen. Soles, which is currently in Senate Finance.]

CURRENT LAW: North Carolina law sets forth four (4) basic ways in which a town or city may annex an area.

1. **Voluntary Annexation**. The owners of all real property in the area desiring to be annexed sign a petition requesting annexation. Part 1 of Article 4 of Chapter 160A.
2. **Legislative Act**. The General Assembly has the authority to extend the boundaries of any town or city. This method is most helpful to a town or city trying to annex an area that they could not otherwise.
3. **Satellite Annexation**. This method allows a town or city to annex certain non-contiguous areas meeting the statutory standards into the town or city limits. Part 4 of Article 4 of Chapter 160A.
4. **Nonvoluntary Annexation**. The town or city brings into the corporate limits an area that has not voluntarily agreed to be annexed. Parts 2 and 3 of Article 4 of Chapter 160A.

BILL ANALYSIS:

The Proposed Committee Substitute for House Bill 1992 would annex two specifically described tracts of land that into the existing boundaries of the Town of Shallote:

- Parcel A, Rivers Edge Golf Club and Plantation, containing 21.0 acres, more or less.
- Parcel B, Rivers Edge Golf Club and Plantation, containing 11.96 acres, more or less.

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

H1992e1-SMRE-CSRE

**Erika Churchill, Committee Counsel to House Local Government I Committee substantially contributed to this summary.*

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☐ Committee Substitute for

HB 1992 A BILL TO BE ENTITLED AN ACT ADDING CERTAIN DESCRIBED PROPERTY TO THE CORPORATE BOUNDARIES OF THE TOWN OF SHALLOTTE.

☒ With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

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

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 770
PROPOSED COMMITTEE SUBSTITUTE H770-CSLY-68 [v.4]

6/5/2006 3:06:22 PM

Short Title: Parental Savings Trust Fund Tax Deduction.-AB (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW FOR AN INCOME TAX DEDUCTION FOR CERTAIN CONTRIBUTIONS TO THE PARENTAL SAVINGS TRUST FUND.

The General Assembly of North Carolina enacts:

SECTION 1. G.S.105-134.6(d) is amended by adding a new subdivision to read:

"(d) Other Adjustments. – The following adjustments to taxable income shall be made in calculating North Carolina taxable income:

...

(4) The taxpayer may deduct from taxable income the amount, not to exceed ten thousand dollars ($10,000), contributed to an account in the Parental Savings Trust Fund of the State Educational Assistance Authority established pursuant to G.S. 116-209.25.

(5) The taxpayer shall add to taxable income the amount deducted from taxable income in a prior taxable year under subdivision (4) of this subsection to the extent this amount was withdrawn from the Parental Savings Trust Fund of the State Education Assistance Authority established pursuant to G.S. 116-209.25 and not used to pay for the qualified higher education expenses of the designated beneficiary, unless the withdrawal was made without penalty under section 529 of the Code due to the death or permanent disability of the designated beneficiary."

SECTION 2. The Revenue Laws Study Committee shall study the issue of providing income tax deductions for all contributions to section 529 plans. The Committee shall report on its findings, including any recommendations or legislative proposals, to the 2007 General Assembly.

SECTION 3. Section 1 of this act is effective for taxable years beginning on or after January 1, 2006. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 770

Short Title:	Parental Savings Trust Fund Tax Deduction.-AB	(Public)
Sponsors:	Representatives Dickson; Faison and Glazier.	
Referred to:	Finance.	

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW FOR AN INCOME TAX DEDUCTION FOR CERTAIN CONTRIBUTIONS TO THE PARENTAL SAVINGS TRUST FUND.

The General Assembly of North Carolina enacts:

SECTION 1. G.S.105-134.6(b), as amended by S.L. 2005-1, is amended by adding a new subdivision to read:

"(b) Deductions. – The following deductions from taxable income shall be made in calculating North Carolina taxable income, to the extent each item is included in taxable income:

...

(19) The amount, not to exceed ten thousand dollars ($10,000), the parent or grandparent of a designated beneficiary contributed on behalf of the designated beneficiary to the Parental Savings Trust Fund of the State Educational Assistance Authority established pursuant to G.S. 116-209.25. The amount of the deduction may not exceed five thousand dollars ($5,000) per contributor per beneficiary per taxable year."

SECTION 2. G.S. 105-134.6(c) is amended by adding a new subdivision to read:

"(c) Additions. – The following additions to taxable income shall be made in calculating North Carolina taxable income, to the extent each item is not included in taxable income:

...

(9) The amount deducted from taxable income in a prior taxable year under subdivision (b)(19) of this section to the extent this amount was withdrawn from the Parental Savings Trust Fund of the State Education Assistance Authority established pursuant to G.S. 116-209.25 and not used to pay for the qualified higher education expenses of the designated beneficiary, unless the withdrawal was

made without penalty under section 529 of the Code due to the death or permanent disability of the designated beneficiary."

SECTION 3. This act is effective for taxable years beginning on or after January 1, 2005.

HOUSE BILL 770:
Parental Savings Trust Fund Tax Deduction.-AB

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 4, 2006
Introduced by:	Rep. Dickson	**Summary by:**	Martha Walston
Version:	PCS to First Edition H770-CSLY-71		Committee Counsel

SUMMARY: ***The proposed committee substitute for House Bill 770 would allow a deduction from taxable income of an amount, not to exceed $5,000, contributed by an individual taxpayer ($10,000 for married couple filing a joint return) to a Parental Savings Trust Fund. The PCS would require the taxpayer to add back to taxable income any amount deducted in an earlier year if the funds were withdrawn from the Fund and not used for the intended purpose, unless the withdrawal was made due to the death or permanent disability of the Fund beneficiary.***

The 1st edition only allowed a deduction from taxable income if the contribution to the Fund was made by a parent or grandparent of the designated beneficiary. The 1st edition also allowed a deduction of up to $5,000 per contributor per beneficiary per taxable year, with a maximum contribution of $10,000. The PCS allows a maximum deduction of $5,000 per taxpayer ($10,000 for a married couple filing a joint return) regardless of the number of beneficiaries.

CURRENT LAW: Under current federal and State law, distributions from a section 529 (qualified tuition program) are excludable from taxable income to the extent the distributions are used to pay for qualified higher education expenses. Interest earned on a section 529 account is also tax exempt. A qualified tuition program is a program established and maintained by a state or one or more eligible institutions under which a taxpayer may either buy tuition credits on behalf of a designated beneficiary which entitle the beneficiary to a waiver or payment of expenses or make contributions to an account set to meet the beneficiary's expenses.

Qualified higher education expenses are: (1) tuition fees, books, supplies, equipment required for the enrollment or attendance of a beneficiary at an eligible educational institution, and expenses for special needs services; and (2) room and board costs.

North Carolina has established a qualified tuition program known as the Parental Savings Trust Fund.

BILL ANALYSIS: House Bill 770 would allow an individual taxpayer to deduct from taxable income up to $5,000 ($10,000 for a married couple filing a joint return) in contributions made to a Parental Savings Trust Fund. If the amount deducted from taxable income in a prior taxable year was withdrawn from the Fund but not used to pay for qualified expenses, then the amount must be added back into taxable income. If the withdrawal from the Fund was made without penalty under section 529 of the Code because of the death or permanent disability of the Fund beneficiary, then no addback to taxable income is required. The bill does not allow a deduction for contributions made to section 529 plans other than the Parental Savings Trust Fund.

In addition, this bill directs the Revenue Laws Study Committee to study the issue of allowing income tax deductions for all contributions to section 529 plans and requires the Committee to report to the 2007 General Assembly.

EFFECTIVE DATE: House Bill 770 is effective for taxable years beginning on or after January 1, 2006

BACKGROUND: North Carolina's National College Savings Program, established by the State Education Assistance Authority, enables residents of any state to invest funds to pay the qualified higher education expenses of their designated beneficiaries on a flexible basis that achieves certain tax savings in accordance with federal and North Carolina tax law. As part of the Program, the General Assembly has established the Parental Savings Trust Fund, of which the Authority is trustee, to hold all assets of the Program. The Trust Fund is not the property of the State of North Carolina.

Every state currently offers a state section 529 plan. Twenty-five states allow for a full or partial income tax deduction for contributions to the state's own plan.

H0770e1-SMLA-CSLY

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

ATTACHMENT 9

EDITION No. _____

H. B. No. 770 DATE 6-6-06

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

Rep.) Luebke
Sen.)

1 moves to amend the bill on page 1, line 25
2 ( ) WHICH CHANGES THE TITLE
3 by adding at the end of that line
4
5 "This act is repealed effective for
6 taxable years beginning on or after January
7 1, 2011."
8
9
10
11
12
13
14
15
16
17
18
19

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☐ Committee Substitute for

HB 770 A BILL TO BE ENTITLED AN ACT TO ALLOW FOR AN INCOME TAX DEDUCTION FOR CERTAIN CONTRIBUTIONS TO THE PARENTAL SAVINGS TRUST FUND.

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

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

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 2047*
PROPOSED COMMITTEE SUBSTITUTE H2047-PCS30595-RBx-48

Short Title: Video Service Competition Act. (Public)

Sponsors:

Referred to:

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO PROMOTE CONSUMER CHOICE IN VIDEO SERVICE PROVIDERS AND TO ESTABLISH UNIFORM TAXES FOR VIDEO PROGRAMMING SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 66 of the General Statutes is amended by adding a new Article to read:

"Article 42.

"State Franchise for Cable Television Service.

"**§ 66-350. Definitions.**

The following definitions apply in this Article:

(1) Cable service. – Defined in G.S. 105-164.3.

(2) Cable system. – Defined in 47 U.S.C. § 522.

(3) Channel. – A portion of the electromagnetic frequency spectrum that is used in a cable system and is capable of delivering a television channel.

(4) Existing agreement. – A local franchise agreement that was awarded under G.S. 153A-137 or G.S. 160A-319 and meets either of the following:

a. Is in effect on January 1, 2007.

b. Expired before January 1, 2007, and the cable service provider under the agreement provides cable service to subscribers in the franchise area on January 1, 2007.

(5) Pass a household. – Make service available to a household, regardless of whether the household subscribes to the service.

(6) PEG channel. – A public, educational, or governmental access channel provided to a county or city.

(7) Secretary. – The Secretary of State.

"**§ 66-351. State franchising authority.**

(a) Authority. – The Secretary of State is designated the exclusive franchising authority in this State for cable service provided over a cable system. This designation replaces the authorization to counties and cities in former G.S. 153A-137 and G.S. 160A-319 to award a franchise for cable service. This designation is effective January 1, 2007. After this date, a county or city may not award or renew a franchise for cable service.

(b) Award and Scope. – The Secretary is considered to have awarded a franchise to a person who files a notice of franchise under G.S. 66-352. A franchise for cable service authorizes the holder of the franchise to construct and operate a cable system over public rights-of-way within the area to be served. Chapter 160A of the General Statutes governs the regulation of public rights-of-way by a city.

"**§ 66-352. Award of franchise and commencement of service.**

(a) Notice of Franchise. – A person who intends to provide cable service over a cable system in an area must file a notice of franchise with the Secretary before providing the service. A person who files a notice of franchise must pay a fee in the amount set in G.S. 55-1-22 for filing articles of incorporation.

A notice of franchise is effective when it is filed with the Secretary. The notice of franchise must include all of the following:

(1) The applicant's name and principal place of business.

(2) A description and map of the area to be served.

(3) A list of each county and city in which the described service area is located, in whole or in part.

(4) A schedule indicating when service is expected to be offered in the service area.

(b) Commencement of Service. – A person who files a notice of franchise under subsection (a) of this section must begin providing cable service in the service area described in the notice within 120 days after the notice is filed. If cable service does not begin within this period, the notice of franchise terminates 130 days after it was filed. If cable service begins within this period, the holder of the State-issued franchise must file a notice of service with the Secretary within 10 days after the cable service begins. Cable service begins when it passes one or more households in the described service area. This subsection does not apply to a cable service provider who terminates an existing agreement whose franchise area includes all of the service area described in a notice of franchise filed by the provider under subsection (a) of this section.

A notice of service for a service area must include all of the following:

(1) The effective date of a notice of franchise for that area.

(2) A description and map of the service area.

(3) A statement that cable service has begun in the service area.

(c) Extension. – A person who intends to provide cable service over a cable system in an area that is contiguous with but outside the service area described in a notice of franchise on file with the Secretary must file a notice of franchise under subsection (a) of this section that includes the proposed area. The initial service requirements in subsection (b) of this section apply to the proposed area. If the map of

the area to be served includes any area that is part of the service area of another State-issued franchise, the termination of a notice of franchise for the proposed area for failure to begin service within the required time does not affect the status of the other State-issued franchise.

(d) Withdrawal. – A person may withdraw a notice of franchise by filing a notice of withdrawal with the Secretary. The notice of withdrawal must be filed at least 90 days before the service is withdrawn.

"**§ 66-353. Annual service report.**

A holder of a State-issued franchise must file an annual service report with the Secretary. The report must be filed on or before July 31 of each year. The report must be accompanied by a fee in the amount set in G.S. 55-1-22 for filing a corporate annual report. The report must include all of the following:

(1) The effective date of a notice of franchise for that area.
(2) A description and map of the service area.
(3) The approximate number of households in the service area.
(4) A description and a map of the households passed in the service area as of July 1.
(5) The percentage of households passed in the service area as of July 1.
(6) The percentage of households passed in the service area as of July 1 of any preceding year for which a report was required under this section.
(7) A report indicating the extent to which the holder has met the customer service requirements under G.S. 66-356(b).
(8) A schedule indicating when service is expected to be offered in the service area, to the extent the schedule differs from one included in the notice of franchise or in a report previously submitted under this section, and an explanation of the reason for the new schedule.

"**§ 66-354. General filing and report requirements.**

(a) General. – A document filed with the Secretary under this Article must be signed by an officer or general partner of the person submitting the document. Within five days after a person files a document with the Secretary under this Article, the person must send a copy of the document to any county or city included in the service area described in the document. A document filed under this Article is a public record as defined in G.S. 132-1.

A successor in interest to a person who has filed a notice of franchise is not required to file another notice of franchise. When a change in ownership occurs, the owner must file a notice of change in ownership with the Secretary within 14 days after the change becomes effective.

(b) Penalty. – A person who fails to file a notice of franchise, a notice of service, or an annual service report as required under this Article is subject to a civil penalty of two hundred fifty dollars ($250.00) a day until the document is filed. The penalty is payable to the Secretary. The clear proceeds of the penalties collected under this subsection must be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

"**§ 66-355. Effect on existing local franchise agreement.**

(a) Existing Agreement. – This Article does not affect an existing agreement except as follows:

(1) Effective January 1, 2007, gross revenue used to calculate the payment of the franchise tax imposed by G.S. 153A-154 or G.S. 160A-214 does not include gross receipts from cable service subject to sales tax under G.S. 105-164.4. This exclusion does not otherwise affect the calculation of gross revenue and the payment to counties and cities of franchise tax revenue under existing agreements that have not been terminated under subsection (b) of this section.

(2) A cable service provider under an existing agreement may terminate the agreement in accordance with subsection (b) of this section when a notice of service filed under G.S. 66-352 indicates that one or more households in the franchise area of the existing agreement are passed by both the cable service provider under the existing agreement and the holder of a State-issued franchise.

(b) Termination. – To terminate an existing agreement, a cable service provider must file a notice of termination with the affected county or city and file a notice of franchise with the Secretary. A termination of an existing agreement becomes effective at the end of the month in which the notice of termination is filed with the affected county or city. A termination of an existing agreement ends the obligations under the agreement and under any local cable regulatory ordinance that specifically authorizes the agreement as of the effective date of the termination but does not affect the rights or liabilities of the county or city, a taxpayer, or another person arising under the existing agreement or local ordinance before the effective date of the termination.

"**§ 66-356. Service standards and requirements.**

(a) Discrimination Prohibited. – A person who provides cable service over a cable system may not deny access to the service to any group of potential residential subscribers within the filed service area because of the race or income of the residents. A violation of this subsection is considered an unfair or deceptive act or practice under G.S. 75-1.1.

In determining whether a cable service provider has violated this subsection with respect to a group of potential residential subscribers in a service area, the following factors must be considered:

(1) The length of time since the provider filed the notice of service for the area. If less than a year has elapsed since the notice of service was filed, it is conclusively presumed that a violation has not occurred.

(2) The cost of providing service to the affected group due to distance from facilities, density, or other factors.

(3) Technological impediments to providing service to the affected group.

(4) Inability to obtain access to property required to provide service to the affected group.

(5) Competitive pressure to respond to service offered by another cable service provider.

(b) FCC Standards. – A person who provides cable service over a cable system must comply with the customer service requirements in 47 C.F.R. Part 76 and emergency alert requirements established by the Federal Communications Commission.

(c) Complaints. – The Consumer Protection Division of the Attorney General's office is designated as the State agency to receive and respond to customer complaints concerning cable service. A cable service provider who fails to address a customer complaint raised by the Consumer Protection Division in a reasonable time and manner is subject to a civil penalty of one hundred dollars ($100.00) a day until the complaint is addressed. A penalty may not be imposed under this subsection unless the Division has notified the provider of its intent to do so and has given the provider sufficient time to address the complaint. The penalty is payable to the Office of the Attorney General. The clear proceeds of the penalties collected under this subsection must be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

To facilitate the resolution of customer complaints, the cable service provider must include the following information on the customer's bill:

(1) The telephone number for the cable service provider.

(2) The following statement: "If the cable service provider does not satisfactorily resolve your complaint, contact the Consumer Protection Division of the Attorney General's Office of the State of North Carolina."

(3) The telephone number of the Consumer Protection Division of the Attorney General's Office.

(d) No Build-Out. – No build-out requirements apply to a person who provides cable service under a State-issued franchise.

"**§ 66-357. Availability and use of PEG channels.**

(a) Application. – This section applies to a person who provides cable service under a State-issued franchise. It does not apply to a person who provides cable service under an existing agreement.

(b) Local Request. – A county or city must make a written request to a cable service provider for PEG channel capacity. The request must include a statement describing the county's or city's plan to operate and program each channel requested. The cable service provider must provide the requested PEG channel capacity within 120 days after it receives the written request.

(c) Initial PEG Channels. – A city with a population of at least 50,000 is allowed a minimum of three initial PEG channels plus any channels in excess of this minimum that are activated, as of January 1, 2007, under the terms of an existing franchise agreement whose franchise area includes the city. A city with a population of less than 50,000 is allowed a minimum of two initial PEG channels plus any channels in excess of this minimum that are activated, as of January 1, 2007, under the terms of an existing franchise agreement whose franchise area includes the city. For a city included in the franchise area of an existing agreement, the agreement determines the service tier placement and transmission quality of the initial PEG channels. For a city that is not included in the franchise area of an existing agreement, the initial PEG channels must

be on a basic service tier and the transmission quality of the channels must be equivalent to those of the closest city covered by an existing agreement.

A county is allowed a minimum of two initial PEG channels plus any channels in excess of this minimum that are activated, as of January 1, 2007, under the terms of an existing franchise agreement whose franchise area includes the county. For a county included in the franchise area of an existing agreement, the agreement determines the service tier placement and transmission quality of the initial PEG channels. For a county that is not included in the franchise area of an existing agreement, the initial PEG channels must be on a basic service tier and the transmission quality of the channels must be equivalent to those of any city with PEG channels in the county.

The cable service provider must maintain the same channel designation for a PEG channel unless the service area of the State-issued franchise includes PEG channels that are operated by different counties or cities and those PEG channels have the same channel designation.

(d) Additional PEG Channels. – A county or city that does not have seven PEG channels, including the initial PEG channels, is eligible for an additional PEG channel if it meets the programming requirements in this subsection. A county or city that has seven PEG channels is not eligible for an additional channel.

A county or city that meets the programming requirements in this subsection may make a written request under subsection (b) of this section for an additional channel. The additional channel may be provided on any service tier. The transmission quality of the additional channel must be at least equivalent to the transmission quality of the other channels provided.

The PEG channels operated by a county or city must meet the following programming requirements for at least 120 continuous days in order for the county or city to obtain an additional channel:

(1) All of the PEG channels must have scheduled programming for at least eighty percent (80%) of the time for at least eight hours a day.

(2) The programming content of each of the PEG channels must not repeat more than fifteen percent (15%) of the programming content on any of the other PEG channels.

(3) No more than fifteen percent (15%) of the programming content on any of the PEG channels may be character-generated programming.

(e) Use of Channels. – If a county or city no longer provides any programming for transmission over a PEG channel it has activated, the channel may be reprogrammed at the cable service provider's discretion. A cable service provider must give at least 60 days notice to a county or city before it reprograms a PEG channel that is not used. The cable service provider must restore a previously lost PEG channel within 120 days of the date a county or city certifies to the provider a schedule that demonstrates the channel will be used.

(f) Operation of Channels. – A cable service provider is responsible only for the transmission of a PEG channel. The county or city to which the PEG channel is provided is responsible for the operation and content of the channel. A county or city that provides content to a cable service provider for transmission on a PEG channel is

considered to have authorized the provider to transmit the content throughout the provider's service area, regardless of whether part of the service area is outside the boundaries of the county or city.

All programming on a PEG channel must be noncommercial. A cable service provider may not brand content on a PEG channel with its logo, name, or other identifying marks. A cable service provider is not required to transmit content on a PEG channel that is branded with the logo, name, or other identifying marks of another cable service provider.

"**§ 66-358. Transmission of PEG channels.**

(a) Service. – When a cable service provider operating under a State-issued franchise begins providing cable service in an area, the service must include the transmission of PEG channels by one of the following methods:

(1) Interconnection with another cable system operated in its service area. A cable service provider operating in the same service area as a provider under a State-issued franchise must interconnect its cable system on reasonable and competitively neutral terms with the other provider's cable system when it receives a written request for interconnection and may not refuse to interconnect on these terms. Interconnection may be accomplished by direct cable, microwave link, satellite, or another method of connection.

(2) Transmission of the signal from each PEG channel programmer's origination site, if the origination site is in the provider's service area.

(b) Signal. – All PEG channel programming provided to a cable service provider for transmission must meet the federal National Television System Committee standards or the Advanced Television Systems Committee Standards. If a PEG channel programmer complies with these standards and the cable service provider cannot transmit the programming without altering the transmission signal, then the cable service provider must do one of the following:

(1) Alter the transmission signal to make it compatible with the technology or protocol the cable service provider uses to deliver its cable service.

(2) Provide to the county or city the equipment needed to alter the transmission signal to make it compatible with the technology or protocol the cable service provider uses to deliver its cable service.

"**§ 66-359. PEG channel grants.**

(a) PEG Channel Fund. – The PEG Channel Fund is created as an interest-bearing special revenue fund. It consists of revenue allocated to it under G.S. 105-164.44I(b) and any other revenues appropriated to it. The e-NC Authority, created under G.S. 143B-437.46, administers the Fund.

(b) Grants. – A county or city may apply to the e-NC Authority for a grant from the PEG Channel Fund. In awarding grants from the Fund, the e-NC Authority must to the extent possible select applicants from all parts of the State based upon need. Grants from the Fund are subject to the following limitations:

(1) The grant may not exceed twenty thousand dollars ($20,000).

(2) The applicant must match the grant on a dollar-for-dollar basis.

(3) The grant may be used only for capital expenditures necessary to provide PEG channel programming.

(4) An applicant may receive no more than one grant per fiscal year.

(c) Reports. – The e-NC Authority must publish an annual report on grants awarded under this section. The report must list each grant recipient, the amount of the grant, and the purpose of the grant.

"**§ 66-360. Service to public building.**

At the written request of a county or city, a cable service provider operating under a State-issued franchise must provide cable service without charge to a public building located within 125 feet of the provider's cable system. The required service is the basic, or lowest-priced, service the provider offers to customers. The terms and conditions that apply to service provided to a retail customer apply to the service provided to the public building. Only one service outlet is required for a building. The cable service provider is not required to provide concealed inside wiring. A public building is a building used as a public school, a charter school, a county or city library, or a function of the county or city."

SECTION 2. G.S. 105-164.3 is amended by adding a new subdivision to read:

"**§ 105-164.3. Definitions.**

The following definitions apply in this Article:

...

(50c) Video programming. – Programming provided by, or generally considered comparable to programming provided by, a television broadcast station, regardless of the method of delivery."

SECTION 3. G.S. 105-164.4(a)(6) reads as rewritten:

"(6) The combined general rate applies to the gross receipts derived from providing ~~any of the following broadcast services~~ video programming to a subscriber in this State. A cable service provider, a direct-to-home satellite service provider, and any other person engaged in the business of providing ~~any of these services~~ video programming is considered a retailer under this ~~Article:~~Article.

~~a. Direct-to-home satellite service.~~

~~b. Cable service.~~"

SECTION 4. G.S. 105-164.4C(d) is recodified as G.S. 105-164.4D with the catchline "Bundled services."

SECTION 5. G.S. 105-164.4D, as recodified by Section 4 of this act, reads as rewritten:

"**§ 105-164.4D. Bundled services.**

~~Bundled Services.~~ When a taxable ~~telecommunications~~ service is bundled with a service that is not taxable, the tax applies to the gross receipts from the taxable service in the bundle as follows:

(1) If the service provider offers all the services in the bundle on an unbundled basis, tax is due on the unbundled price of the taxable

service, less the discount resulting from the bundling. The discount for a service as the result of bundling is the proportionate price decrease of the service, determined on the basis of the total unbundled price of all the services in the bundle compared to the bundled price of the services.

(2) If the service provider does not offer one or more of the services in the bundle on an unbundled basis, tax is due on the taxable service based on a reasonable allocation of revenue to that service. If the service provider maintains an account for revenue from a taxable service, the service provider's allocation of revenue to that service for the purpose of determining the tax due on the service must reflect its accounting allocation of revenue to that service."

SECTION 6. The catchline to G.S. 105-164.12B reads as rewritten:

"**§ 105-164.12B. ~~Bundled transactions.~~Tangible personal property bundled with service contract.**"

SECTION 7. G.S. 105-164.44F(a) reads as rewritten:

"(a) Amount. – The Secretary must distribute ~~to the cities~~ part of the taxes imposed by G.S. 105-164.4(a)(4c) on telecommunications service. The Secretary must make the distribution within 75 days after the end of each calendar quarter. The amount the Secretary must distribute is ~~eighteen and three one-hundredths percent (18.03%)~~ the following percentages of the net proceeds of the taxes collected during the ~~quarter,~~ quarter:

(1) Eighteen and three one-hundredths percent (18.03%), minus two million six hundred twenty thousand nine hundred forty-eight dollars ~~($2,620,948).~~($2,620,948), must be distributed to cities in accordance with this section. ~~This~~ The deduction is one-fourth of the annual amount by which the distribution to cities of the gross receipts franchise tax on telephone companies, imposed by former G.S. 105-20, was required to be reduced beginning in fiscal year 1995-96 as a result of the "freeze deduction." ~~The Secretary must distribute the specified percentage of the proceeds, less the "freeze deduction" among the cities in accordance with this section.~~

(2) Seven and twenty-three one-hundredths percent (7.23%) must be distributed to counties and cities as provided in G.S. 105-164.44I."

SECTION 8. Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-164.44I. Distribution of part of sales tax on video programming service and telecommunications service to counties and cities.**

(a) Distribution. – The Secretary must distribute to the counties and cities part of the taxes imposed by G.S. 105-164.4(a)(4c) on telecommunications service and G.S. 105-164.4(a)(6) on video programming service. The Secretary must make the distribution within 75 days after the end of each calendar quarter. The amount the Secretary must distribute is the sum of the revenue listed in this subsection. The Secretary must distribute two million dollars ($2,000,000) of this amount in accordance

with subsection (b) of this section and the remainder in accordance with subsections (c) and (d) of this section. The revenue to be distributed under this section consists of the following:

(1) The amount specified in G.S. 105-164.44F(a)(2).

(2) Twenty-two and sixty-one one-hundredths percent (22.61%) of the net proceeds of the taxes collected during the quarter on video programming, other than on direct-to-home satellite service.

(3) Thirty-seven percent (37%) of the net proceeds of the taxes collected during the quarter on direct-to-home satellite service.

(b) Supplemental PEG Support. – The Secretary must include the applicable amount of supplemental PEG channel support in each quarterly distribution to a county or city. The amount to include is one-fourth of twenty-five thousand dollars ($25,000) for each qualifying PEG channel operated by the county or city. The amount of money distributed under this subsection may not exceed two million dollars ($2,000,000) in a fiscal year. If the amount to be distributed for qualifying PEG channels in a fiscal year would otherwise exceed this maximum amount, the Secretary must proportionately reduce the applicable amount distributable for each PEG channel. If the amount to be distributed for qualifying PEG channels in a fiscal year is less than two million dollars ($2,000,000), the Secretary must credit the excess amount to the PEG Channel Fund, established in G.S. 66-359.

A county or city must certify to the Secretary by July 15 of each year the number of qualifying PEG channels it operates. A qualifying PEG channel is one that meets the programming requirements under G.S. 66-357(d). A county or city may not receive PEG channel support under this subsection for more than three qualifying PEG channels.

The amount included under this subsection in a distribution to a county or city is intended to supplement the PEG channel support available in the amount distributed under this section. The money distributed to a county or city under this subsection must be used by it for the operation and support of PEG channels. For purposes of this subsection, the term "PEG channel" has the same meaning as in G.S. 66-350.

(c) 2006-2007 Fiscal Year Distribution. – The share of a county or city is its proportionate share of the amount to be distributed to all counties and cities under this subsection. The proportionate share of a county or city is the base amount for the county or city compared to the base amount for all other counties and cities. The base amount of a county or city that did not impose a cable franchise tax under G.S. 153A-154 or G.S. 160A-214 before July 1, 2006, is two dollars ($2.00) times the most recent annual population estimate for that county or city. The base amount of a county or city that imposed a cable franchise tax under either G.S. 153A-154 or G.S. 160A-214 before July 1, 2006, is the amount of cable franchise tax and subscriber fee revenue the county or city certifies to the Secretary that it imposed during the first six months of the 2006-2007 fiscal year. A county or city must make this certification by January 15, 2007. The certification must specify the amount of revenue that is derived from the cable franchise tax and the amount that is derived from the subscriber fee.

(d) Subsequent Distributions. – For subsequent fiscal years, the Secretary must multiply the amount of a county's or city's share under this section for the preceding fiscal year by the percentage change in its population for that fiscal year and add the result to the county's or city's share for the preceding fiscal year to obtain the county's or city's adjusted amount. Each county's or city's proportionate share for that year is its adjusted amount compared to the sum of the adjusted amounts for all counties and cities.

(e) Use of Proceeds. – A county or city that imposed subscriber fees during the first six months of the 2006-2007 fiscal year must use a portion of the funds distributed to it under subsections (c) and (d) of this section for the operation and support of PEG channels. The amount of funds that must be used for PEG channel operation and support is two times the amount of subscriber fee revenue the county or city certified to the Secretary that it imposed during the first six months of the 2006-2007 fiscal year. The remainder of the distribution may be used for any public purpose.

(f) Late Information. – A county or city that does not submit information that the Secretary needs to make a distribution by the date the information is due is excluded from the distribution. If the county or city later submits the required information, the Secretary must include the county or city in the distribution for the quarter that begins after the date the information is received.

(g) Population Determination. – In making population determinations under this section, the Secretary must use the most recent annual population estimates certified to the Secretary by the State Budget Officer. For purposes of the distributions made under this section, the population of a county is the population of its unincorporated areas plus the population of an ineligible city in the county, as determined under subsection (g) of this section.

(h) City Changes. – The following changes apply when a city alters its corporate structure or incorporates:

(1) If a city dissolves and is no longer incorporated, the proportional shares of the remaining counties and cities must be recalculated to adjust for the dissolution of that city.

(2) If two or more cities merge or otherwise consolidate, their proportional shares are combined.

(3) If a city divides into two or more cities, the proportional share of the city that divides is allocated among the new cities on a per capita basis.

(4) If a city incorporates after January 1, 2007, and the incorporation is not addressed by subdivisions (2) or (3) of this subsection, the share of the county in which the new city is located is allocated between the county and the new city on a per capita basis.

(i) Ineligible Cities. – An ineligible city is disregarded for all purposes under this section. A city incorporated on or after January 1, 2000, is not eligible for a distribution under this section unless it meets both of the following requirements:

(1) It is eligible to receive funds under G.S. 136-41.2.

(2) A majority of the mileage of its streets is open to the public.

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

SECTION 9. G.S. 105-164.21B is repealed.

SECTION 10. G.S. 153A-137 is repealed.

SECTION 11. G.S. 153A-154 is repealed.

SECTION 12. G.S. 160A-211 reads as rewritten:

"**§ 160A-211. Privilege license taxes.**

(a) Authority. – Except as otherwise provided by law, a city shall have power to levy privilege license taxes on all trades, occupations, professions, businesses, and franchises carried on within the city. A city may levy privilege license taxes on the businesses that were formerly taxed by the State under the following sections of Article 2 of Chapter 105 of the General Statutes only to the extent the sections authorized cities to tax the businesses before the sections were repealed:

G.S. 105-36	Amusements – Manufacturing, selling, leasing, or distributing moving picture films.
G.S. 105-36.1	Amusements – Outdoor theatres.
G.S. 105-37	Amusements – Moving pictures – Admission.
G.S. 105-42	Private detectives and investigators.
G.S. 105-45	Collecting agencies.
G.S. 105-46	Undertakers and retail dealers in coffins.
G.S. 105-50	Pawnbrokers.
G.S. 105-51.1	Alarm systems.
G.S. 105-53	Peddlers, itinerant merchants, and specialty market operators.
G.S. 105-54	Contractors and construction companies.
G.S. 105-55	Installing elevators and automatic sprinkler systems.
G.S. 105-61	Hotels, motels, tourist courts and tourist homes.
G.S. 105-62	Restaurants.
G.S. 105-65	Music machines.
G.S. 105-65.1	Merchandising dispensers and weighing machines.
G.S. 105-66.1	Electronic video games.
G.S. 105-74	Pressing clubs, dry cleaning plants, and hat blockers.
G.S. 105-77	Tobacco warehouses.
G.S. 105-80	Firearms dealers and dealers in other weapons.
G.S. 105-85	Laundries.
G.S. 105-86	Outdoor advertising.
G.S. 105-89	Automobiles, wholesale supply dealers, and service stations.
G.S. 105-89.1	Motorcycle dealers.
G.S. 105-90	Emigrant and employment agents.
G.S. 105-91	Plumbers, heating contractors, and electricians.

G.S. 105-97	Manufacturers of ice cream.
G.S. 105-98	Branch or chain stores.
G.S. 105-99	Wholesale distributors of motor fuels.
G.S. 105-102.1	Certain cooperative associations.
G.S. 105-102.5	General business license.

(b) Barbershop and Salon Restriction. – A privilege license tax levied by a city on a barbershop or a beauty salon may not exceed two dollars and fifty cents ($2.50) for each barber, manicurist, cosmetologist, beautician, or other operator employed in the barbershop or beauty salon.

(c) ~~Piped Gas Restriction.~~ Prohibition.– A city may not ~~levy a privilege license tax on a person who is engaged in the business of supplying piped natural gas and is subject to tax under Article 5E of Chapter 105 of the General Statutes.~~ impose a license, franchise, or privilege tax on a person engaged in any of the businesses listed in this subsection. These businesses are subject to a State tax for which the city receives a share of the tax revenue.

(1) Supplying piped natural gas taxed under Article 5E of Chapter 105 of the General Statutes.

(2) Providing telecommunications service taxed under G.S. 105-164.4(a)(4c).

(3) Providing video programming taxed under G.S. 105-164.4(a)(6).

~~(d) Telecommunications Restriction. A city may not impose a license, franchise, or privilege tax on a company taxed under G.S. 105-164.4(a)(4c).~~"

SECTION 13. G.S. 160A-214 is repealed.

SECTION 14. G.S. 160A-296(a) reads as rewritten:

"(a) A city shall have general authority and control over all public streets, sidewalks, alleys, bridges, and other ways of public passage within its corporate limits except to the extent that authority and control over certain streets and bridges is vested in the Board of Transportation. General authority and control includes but is not limited ~~to:~~to all of the following:

(1) The duty to keep the public streets, sidewalks, alleys, and bridges in proper ~~repair;~~repair.

(2) The duty to keep the public streets, sidewalks, alleys, and bridges open for travel and free from unnecessary ~~obstructions;~~obstructions.

(3) The power to open new streets and alleys, and to widen, extend, pave, clean, and otherwise improve existing streets, sidewalks, alleys, and bridges, and to acquire the necessary land therefor by dedication and acceptance, purchase, or eminent ~~domain;~~domain.

(4) The power to close any street or alley either permanently or ~~temporarily;~~temporarily.

(5) The power to regulate the use of the public streets, sidewalks, alleys, and ~~bridges;~~bridges.

(6) The power to regulate, license, and prohibit digging in the streets, sidewalks, or alleys, or placing therein or thereon any pipes, poles,

wires, fixtures, or appliances of any kind either on, above, or below the ~~surface;~~surface. In exercising this power, a city may not impose a fee or charge for use of the public right-of-way unless the fee or charge applies uniformly to all non-municipal users of the public right-of-way.

(7) The power to provide for lighting the streets, alleys, and bridges of the ~~city; and~~city.

(8) The power to grant easements in street rights-of-way as permitted by G.S. 160A-273."

SECTION 15. G.S. 160A-319(a) reads as rewritten:

"(a) A city shall have authority to grant upon reasonable terms franchises for ~~the operation within the city of~~ a telephone system and any of the enterprises listed in ~~G.S. 160A-311 and for the operation of telephone systems.~~ G.S. 160A-311, except a cable television system. A franchise granted by a city authorizes the operation of the franchised activity within the city. No franchise shall be granted for a period of more than 60 years, except that a franchise for solid waste collection or disposal systems and facilities shall not be granted for a period of more than 30 ~~years and cable television franchises shall not be granted for a period of more than 20~~ years. Except as otherwise provided by law, when a city operates an enterprise, or upon granting a franchise, a city may by ordinance make it unlawful to operate an enterprise without a franchise."

SECTION 16. To make the distribution required under G.S. 105-164.44I(c), as enacted by this act, for the 2006-2007 fiscal year, a county or city must certify to the Secretary of Revenue by January 15, 2007, the number of qualifying PEG channels it operates.

SECTION 17. A primary purpose of this act is to promote consumer choice in video service providers. A premise of this goal is that increased competition will lead to improved service. Under competition, a customer who is dissatisfied with service by one cable service provider will have the option of choosing a different service provider.

G.S. 66-356, as enacted by this act, designates the Consumer Protection Division of the Attorney General's Office as the agency to receive and respond to unresolved customer complaints about cable service provided by the holder of a State-issued franchise. The transition from local franchise agreements to State-issued franchises will occur gradually.

Due to the expected improvement in customer service and the gradual change to State-issued franchises, the impact of the requirement in new G.S. 66-356 on the staffing needs of the Consumer Protection Division is not clear. The Office of the Attorney General is therefore requested to monitor the number and type of cable service complaints it receives from customers in areas served under a local franchise agreement and from areas served under a State-issued franchise to determine whether the Consumer Protection Division needs additional staff to fulfill the duty imposed by new G.S. 66-356 and to make a report concerning staffing to the Fiscal Research Division of the North Carolina General Assembly by April 1, 2007.

SECTION 18. The Secretary of State has no authority to determine whether a person who is providing video programming is providing cable service over a cable

system. An award of a State-issued franchise under Article 42 of Chapter 66 of the General Statutes, as enacted by this act, does not affect a determination of whether video programming provided by the holder of the franchise is considered cable service provided over a cable system under federal law or under a state law that applies substantially the same definitions of "cable service" and "cable system" as federal law.

SECTION 19. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 20. The Revenue Laws Study Committee must review the effect Article 42 of Chapter 66, as enacted by this act, has on the following to determine if any changes to the law are needed and must report its findings to the 2009 Session of the North Carolina General Assembly:

(1) Competition in video programming services.

(2) The number of cable service subscribers, the price of cable service by service tier, and the technology used to deliver the service.

(3) The deployment of broadband in the State.

SECTION 21. This act becomes effective January 1, 2007. Sections 7 and 8 of this act apply to the distribution made within 75 days after March 31, 2007, for the quarter starting January 1, 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 2047*

Short Title:	Video Service Competition Act.	(Public)
Sponsors:	Representatives Carney, Luebke, McComas, Wainwright (Primary Sponsors); Brubaker, Church, Hill, Wilkins, Adams, and Faison.	
Referred to:	Finance.	

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO PROMOTE CONSUMER CHOICE IN VIDEO SERVICE PROVIDERS AND TO ESTABLISH UNIFORM TAXES FOR VIDEO PROGRAMMING SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 66 of the General Statutes is amended by adding a new Article to read:

"Article 42.

"State Franchise for Cable Television Service.

"**§ 66-350. Definitions.**

The following definitions apply in this Article:

(1) Cable service. – Defined in G.S. 105-164.3.

(2) Cable system. – Defined in 47 U.S.C. § 522.

(3) Channel. – A portion of the electromagnetic frequency spectrum that is used in a cable system and is capable of delivering a television channel.

(4) Commission. – The North Carolina Utilities Commission.

(5) Existing agreement. – A local franchise agreement that was awarded under G.S. 153A-137 or G.S. 160A-319 and is in effect on January 1, 2007.

(6) Pass a household. – Make service available to a household, regardless of whether the household subscribes to the service.

(7) PEG channel. – A public, educational, or governmental access channel provided to a county or city.

"**§ 66-351. State franchising authority.**

(a) Authority. – The North Carolina Utilities Commission is designated the exclusive franchising authority in this State for cable service provided over a cable system. This designation replaces the authorization to counties and cities in former

G.S. 153A-137 and G.S. 160A-319 to award a franchise for cable service. This designation is effective January 1, 2007. After this date, a county or city may not award or renew a franchise for cable service.

(b) Award and Scope. – The Commission is considered to have awarded a franchise to a person who files a notice of service under G.S. 66-352. A franchise for cable service authorizes the holder of the franchise to construct and operate a cable system over public rights-of-way within the area to be served. Chapter 160A of the General Statutes governs the regulation of public rights-of-way by a city.

"**§ 66-352. Notice and commencement of service.**

(a) Notice of Service. – A person who intends to provide cable service over a cable system in an area must file a notice of service with the Commission before providing the service. The notice is effective when it is filed with the Commission. The notice of service must include all of the following:

(1) The applicant's name and principal place of business.

(2) A description and map of the area to be served.

(3) A list of each county and city in which the described service area is located, in whole or in part.

(4) A schedule indicating when service is expected to be offered in part or all of the service area.

(b) Initial Service. – A person who files a notice of service under subsection (a) of this section must begin providing cable service in the service area described in the notice within 120 days after the notice is filed. If cable service does not begin within this period, the notice of service terminates 130 days after it was filed. If cable service begins within this period, the holder of the State-issued franchise must file a report of initial service with the Commission within 10 days after the cable service begins. Cable service begins when it passes one or more households in the described service area. This subsection does not apply to a cable service provider who terminates an existing agreement whose franchise area includes all of the service area described in a notice of service filed by the provider under subsection (a) of this section.

A report of initial service for a service area must include all of the following:

(1) The effective date of a notice of service for that area.

(2) A description and map of the service area.

(3) A statement that cable service has begun in the service area.

(c) Extension. – A person who intends to provide cable service over a cable system in an area that is contiguous with but outside the service area described in a notice of service on file with the Commission must file a notice of service under subsection (a) of this section that includes the proposed area. The initial service requirements in subsection (b) of this section apply to the proposed area. If the map of the area to be served includes any area that is part of the service area of another State-issued franchise, the termination of a notice of service for the proposed area for failure to begin service within the required time does not affect the status of the other State-issued franchise.

(d) Withdrawal. – A person may withdraw a notice of service by filing a notice of withdrawal with the Commission. The notice of withdrawal must be filed at least 90 days before the service is withdrawn.

"**§ 66-353. Annual service report.**

A holder of a State-issued franchise must file an annual service report with the Commission. The report must be filed on or before July 15 of each year. The report must include all of the following:

(1) The effective date of a notice of service for that area.
(2) A description and map of the service area.
(3) The approximate number of households in the service area.
(4) A description and a map of the households passed in the service area as of July 1.
(5) The percentage of households passed in the service area as of July 1.
(6) The percentage of households passed in the service area as of July 1 of any preceding year for which a report was required under this subsection.
(7) A schedule indicating when service is expected to be offered in part or all of the service area, to the extent the schedule differs from one included in the notice of service or in a report previously submitted under this subsection, and an explanation of the reason for the new schedule.

"**§ 66-354. General filing and report requirements.**

A document filed with the Commission under this section must be signed by an officer or general partner of the person submitting the document. Within five days after a person files a document with the Commission under this section, the person must send a copy of the document to any county or city included in the service area described in the document. A document filed under this section is a public record as defined in G.S. 132-1.

A successor in interest to a person who has filed a notice of service is not required to file another notice of service. When a change in ownership occurs, the owner must file a notice of change in ownership with the Commission within 14 days after the change becomes effective.

"**§ 66-355. Effect on existing local franchise agreement.**

(a) Existing Agreement. – This Article does not affect an existing agreement except as follows:

(1) Effective January 1, 2007, gross revenue used to calculate the payment of the franchise tax imposed by G.S. 153A-154 or G.S. 160A-214 does not include gross receipts from cable service subject to sales tax under G.S. 105-164.4. This exclusion does not otherwise affect the calculation of gross revenue and the payment to counties and cities of franchise tax revenue under existing agreements that have not been terminated under subsection (b) of this section.
(2) A cable service provider under an existing agreement may terminate the agreement in accordance with subsection (b) of this section when a

report of initial service filed under G.S. 66-352 indicates that one or more households in the franchise area of the existing agreement are passed by both the cable service provider under the existing agreement and the holder of a State-issued franchise.

(b) Termination. – To terminate an existing agreement, a cable service provider must file a notice of termination with the affected county or city and file a notice of service with the Commission. A termination of an existing agreement becomes effective at the end of a calendar quarter that is at least 30 days after the notice of termination is filed with the affected county or city. A termination of an existing agreement ends the obligations under the agreement as of the effective date of the termination but does not affect the rights or liabilities of the county or city, a taxpayer, or another person arising under the existing agreement before the effective date of the termination.

"**§ 66-356. Service standards and requirements.**

(a) Discrimination Prohibited. – A person who provides cable service over a cable system may not deny access to the service to any group of potential residential subscribers within the filed service area because of the race or income of the residents. A violation of this subsection is considered an unfair or deceptive act or practice under G.S. 75-1.1.

In determining whether a cable service provider has violated this subsection with respect to a group of potential residential subscribers in a service area, the following factors must be considered:

(1) The length of time since the provider filed the notice of service for the area. If less than a year has elapsed since the notice of service was filed, it is conclusively presumed that a violation has not occurred.

(2) The cost of providing service to the affected group due to distance from facilities, density, or other factors.

(3) Technological impediments to providing service to the affected group.

(4) Inability to obtain access to property required to provide service to the affected group.

(b) FCC Standards. – A person who provides cable service over a cable system must comply with the customer service requirements in 47 C.F.R. § 76.309 and emergency alert requirements established by the Federal Communications Commission. The Consumer Protection Division of the Attorney General's office is designated as the State agency to receive and respond to customer complaints concerning cable service. The number for the Division must be printed on the customer's bill.

(c) No Build-Out. – No build-out requirements apply to a person who provides cable service under a State-issued franchise.

"**§ 66-357. Availability and use of PEG channels.**

(a) Application. – This section applies to a person who provides cable service under a State-issued franchise. It does not apply to a person who provides cable service under an existing agreement.

(b) Local Request. – A county or city must make a written request to a cable service provider for PEG channel capacity. The request must include a statement describing the county's or city's plan to operate and program each channel requested.

The cable service provider must provide the requested PEG channel capacity within 120 days after it receives the written request.

(c) Initial PEG Channels. – If an area is included in both the franchise area of an existing agreement and the service area of a State-issued franchise, the terms of the existing agreement, as of the filing date on the notice of service for the State-issued franchise, determine the required number, service tier placement, and transmission quality of initial PEG channels. The cable service provider must provide the number of PEG channels activated under those terms, giving equivalent service tier placement and transmission quality to those channels. The cable service provider must maintain the same channel designation for a PEG channel unless the service area of the State-issued franchise includes PEG channels that are operated by different counties or cities and those PEG channels have the same channel designation. The expiration of an existing agreement after January 1, 2007, does not affect the requirements in this subsection.

If no existing agreement includes any part of the service area of a State-issued franchise, then the number, service tier placement, and transmission quality of the initial PEG channels a cable service provider must provide depends upon the population of the city in which part or all of the service area is located. If the city's population is at least 50,000, the cable service provider must provide up to three PEG channels on a basic service tier. If the city's population is less than 50,000, a cable service provider must provide up to two PEG channels on a basic service tier. The transmission quality of these PEG channels must be equivalent to those of the closest city covered by an existing agreement.

(d) Additional PEG Channels. – A county or city that does not have seven PEG channels, including the initial PEG channels, is eligible for an additional PEG channel if it meets the programming requirements in this subsection. A county or city that has seven PEG channels is not eligible for an additional channel.

A county or city that meets the programming requirements in this subsection may make a written request under subsection (b) of this section for an additional channel. The additional channel may be provided on any service tier. The transmission quality of the additional channel must be at least equivalent to the transmission quality of the other channels provided.

The PEG channels operated by a county or city must meet the following programming requirements in order for the county or city to obtain an additional channel:

(1) All of the PEG channels must have scheduled programming for at least eighty percent (80%) of the time for at least eight hours a day.

(2) The programming content of each of the PEG channels must not repeat more than fifteen percent (15%) of the programming content on any of the other PEG channels.

(3) No more than fifteen percent (15%) of the programming content on any of the PEG channels may be character-generated programming.

(e) Use of Channels. – If a county or city no longer provides any programming for transmission over a PEG channel it has activated, the channel may be reprogrammed at the cable service provider's discretion. A cable service provider must give at least 60

days notice to a county or city before it reprograms a PEG channel that is not used. The cable service provider must restore a previously lost PEG channel within 120 days of the date a county or city certifies to the provider a schedule that demonstrates the channel will be used.

(f) Operation of Channels. – A cable service provider is responsible only for the transmission of a PEG channel. The county or city to which the PEG channel is provided is responsible for the operation and content of the channel. A county or city that provides content to a cable service provider for transmission on a PEG channel is considered to have authorized the provider to transmit the content throughout the provider's service area, regardless of whether part of the service area is outside the boundaries of the county or city.

All programming on a PEG channel must be noncommercial. A cable service provider is not required to transmit content on a PEG channel that is branded with the logo, name, or other identifying marks of another cable service provider.

"**§ 66-358. Transmission of PEG channels.**

(a) Service. – When a cable service provider operating under a State-issued franchise begins providing cable service in an area, the service must include the transmission of PEG channels by one of the following methods:

(1) Interconnection of its cable system on reasonable and competitively neutral terms with any other cable system operated in its franchise or service area. Interconnection may be accomplished by direct cable, microwave link, satellite, or other method of connection.

(2) Transmission of the signal from each PEG channel programmer's origination site.

(b) Signal. – All PEG channel programming must meet the minimum recognized technical standards for the format used. If a PEG channel programmer transmits its signal in a format a cable service provider cannot transmit without altering the transmission signal, then the cable service provider must do one of the following:

(1) Alter the transmission signal to make it compatible with the technology or protocol the cable service provider uses to deliver its cable service.

(2) Provide to the county or city equipment needed to alter the transmission signal to make it compatible with the technology or protocol the cable service provider uses to deliver its cable service.

"**§ 66-359. Service to public building.**

At the written request of a county or city, a cable service provider operating under a State-issued franchise must provide cable service without charge to a public building located within 125 feet of the provider's cable system. The required service is the basic, or lowest-priced, service the provider offers to customers. The terms and conditions that apply to service provided to a retail customer apply to the service provided to the public building. Only one service outlet is required for a building. The cable service provider is not required to provide concealed inside wiring. A public building is a building used as a public school, a charter school, a county or city library, or a function of the county or city."

SECTION 2. G.S. 105-164.3 is amended by adding a new subdivision to read:

"**§ 105-164.3. Definitions.**

The following definitions apply in this Article:

...

(50c) Video programming. – Programming provided by, or generally considered comparable to programming provided by, a television broadcast station, regardless of the method of delivery."

SECTION 3. G.S. 105-164.4(a)(6) reads as rewritten:

"(6) The combined general rate applies to the gross receipts derived from providing ~~any of the following broadcast services~~ video programming to a subscriber in this State. A cable service provider, a direct-to-home satellite service provider, and any other person engaged in the business of providing ~~any of these services~~ video programming is considered a retailer under this ~~Article:~~Article.

~~a. Direct-to-home satellite service.~~

~~b. Cable service.~~"

SECTION 4. G.S. 105-164.4C(d) is recodified as G.S. 105-164.4D with the catchline "Bundled services."

SECTION 5. G.S. 105-164.4D, as recodified by Section 4 of this act, reads as rewritten:

"**§ 105-164.4D. Bundled services.**

~~Bundled Services.~~ When a taxable ~~telecommunications~~ service is bundled with a service that is not taxable, the tax applies to the gross receipts from the taxable service in the bundle as follows:

(1) If the service provider offers all the services in the bundle on an unbundled basis, tax is due on the unbundled price of the taxable service, less the discount resulting from the bundling. The discount for a service as the result of bundling is the proportionate price decrease of the service, determined on the basis of the total unbundled price of all the services in the bundle compared to the bundled price of the services.

(2) If the service provider does not offer one or more of the services in the bundle on an unbundled basis, tax is due on the taxable service based on a reasonable allocation of revenue to that service. If the service provider maintains an account for revenue from a taxable service, the service provider's allocation of revenue to that service for the purpose of determining the tax due on the service must reflect its accounting allocation of revenue to that service."

SECTION 6. The catchline to G.S. 105-164.12B reads as rewritten:

"**§ 105-164.12B. ~~Bundled transactions.~~Tangible personal property bundled with service contract.**"

SECTION 7. G.S. 105-164.44F(a) reads as rewritten:

"(a) Amount. – The Secretary must distribute ~~to the cities~~ part of the taxes imposed by G.S. 105-164.4(a)(4c) on telecommunications service. The Secretary must make the distribution within 75 days after the end of each calendar quarter. The amount the Secretary must distribute is ~~eighteen and three one-hundredths percent (18.03%)~~ the following percentages of the net proceeds of the taxes collected during the ~~quarter,~~ quarter:

(1) Eighteen and three one-hundredths percent (18.03%), minus two million six hundred twenty thousand nine hundred forty-eight dollars ~~($2,620,948).~~($2,620,948), must be distributed to cities in accordance with this section. ~~This~~ The deduction is one-fourth of the annual amount by which the distribution to cities of the gross receipts franchise tax on telephone companies, imposed by former G.S. 105-20, was required to be reduced beginning in fiscal year 1995-96 as a result of the "freeze deduction." ~~The Secretary must distribute the specified percentage of the proceeds, less the "freeze deduction" among the cities in accordance with this section.~~

(2) Seven and twenty-three one-hundredths percent (7.23%) must be distributed to counties and cities as provided in G.S. 105-164.44I."

SECTION 8. Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-164.44I. Distribution of part of sales tax on video programming service and telecommunications service to counties and cities.**

(a) Distribution. – The Secretary must distribute to the counties and cities part of the taxes imposed by G.S. 105-164.4(a)(4c) on telecommunications service and G.S. 105-164.4(a)(6) on video programming service. The Secretary must make the distribution within 75 days after the end of each calendar quarter. The amount the Secretary must distribute is the sum of the following:

(1) The amount specified in G.S. 105-164.44F(a)(2).

(2) Twenty-two and sixty-one one-hundredths percent (22.61%) of the net proceeds of the taxes collected during the quarter on video programming, other than on direct-to-home satellite service.

(3) Thirty-seven percent (37%) of the net proceeds of the taxes collected during the quarter on direct-to-home satellite service.

(b) Supplemental PEG Support. – The Secretary must include the applicable amount of supplemental PEG channel support in each quarterly distribution to a county or city. The amount to include is one-fourth of sixteen thousand dollars ($16,000) for each qualifying PEG channel operated by the county or city. The amount of money distributed under this subsection may not exceed two million dollars ($2,000,000) in a calendar year. If the amount to be distributed for qualifying PEG channels in a calendar year would otherwise exceed this maximum amount, the Secretary must proportionately reduce the applicable amount distributable for each PEG channel. The amount included under this subsection in a distribution to a county or city is intended to supplement the PEG channel support available in the amount distributed under this section.

A county or city must certify to the Secretary by January 15 of each year the number of qualifying PEG channels it operates. A qualifying PEG channel is one that meets the programming requirements under G.S. 66-357(d). A county or city may not receive PEG channel support for more than three qualifying PEG channels.

The money distributed to a county or city under this subsection must be used by it for the operation and support of PEG channels. For purposes of this subsection, the term "PEG channel" has the same meaning as in G.S. 66-350.

(c) Counties and Cities Without Local Cable Revenue. – The share of a county that did not impose a cable franchise tax under G.S. 153A-154 before January 1, 2007, is one dollar ($1.00) times the most recent annual population estimate for that county. The share of a city that did not impose a cable franchise tax under G.S. 160A-214 before January 1, 2007, is two dollars ($2.00) times the most recent annual population estimate for that city.

(d) Counties and Cities With Local Cable Revenue. – The share of a county or city that imposed a cable franchise tax under either G.S. 153A-154 or G.S. 160A-214 before January 1, 2007, is its proportionate share of the amount to be distributed to all counties and to all cities eligible to receive a distribution under this subsection. The amount to be distributed under this subsection is the amount determined under subsection (a) of this section, minus the amount distributed under subsections (b) and (c) of this section. A county's and city's proportionate share is the amount of cable franchise tax it received under G.S. 153A-154 or G.S. 160A-214 during the 2005-2006 fiscal year plus the amount of a subscriber fee imposed during the 2005-2006 fiscal year compared to the amount of cable franchise tax revenue and subscriber fee revenue all counties and cities received in that fiscal year. Each county or city that imposed a franchise tax under G.S. 153A-154 or G.S. 160A-214 must certify to the Secretary by January 15, 2007, the amount of cable franchise tax revenue and subscriber fee revenue it received in the 2005-2006 fiscal year.

For subsequent fiscal years, the Secretary must multiply the amount of a county's or city's share under this subsection for the preceding year by the percentage change in its population for that fiscal year and add the result to the county's or city's share for the preceding fiscal year to obtain the county's or city's adjusted amount. Each county's or city's proportionate share for that year is its adjusted amount compared to the sum of the adjusted amounts for all counties and cities.

(e) Population Determination. – In making population determinations under this section, the Secretary must use the most recent annual population estimates certified to the Secretary by the State Budget Officer. For purposes of the distributions made under this section, the population of a county is the population of its unincorporated areas plus the population of an ineligible city in the county, as determined under subsection (g) of this section.

(f) Change in City Structure. – The following changes apply when a city alters its corporate structure:

(1) If a city dissolves and is no longer incorporated, the proportional shares of the remaining counties and cities must be recalculated to adjust for the dissolution of that city.

(2) If two or more cities merge or otherwise consolidate, their proportional shares are combined.

(3) If a city divides into two or more cities, the proportional share of the city that divides is allocated among the new cities on a per capita basis.

(g) Ineligible Cities. – An ineligible city is disregarded for all purposes under this section. A city incorporated on or after January 1, 2000, is not eligible for a distribution under this section unless it meets both of the following requirements:

(1) It is eligible to receive funds under G.S. 136-41.2.

(2) A majority of the mileage of its streets is open to the public.

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

SECTION 9. G.S. 105-164.21B is repealed.

SECTION 10. G.S. 153A-137 is repealed.

SECTION 11. G.S. 153A-154 is repealed.

SECTION 12. G.S. 160A-211 reads as rewritten:

"**§ 160A-211. Privilege license taxes.**

(a) Authority. – Except as otherwise provided by law, a city shall have power to levy privilege license taxes on all trades, occupations, professions, businesses, and franchises carried on within the city. A city may levy privilege license taxes on the businesses that were formerly taxed by the State under the following sections of Article 2 of Chapter 105 of the General Statutes only to the extent the sections authorized cities to tax the businesses before the sections were repealed:

G.S. 105-36	Amusements – Manufacturing, selling, leasing, or distributing moving picture films.
G.S. 105-36.1	Amusements – Outdoor theatres.
G.S. 105-37	Amusements – Moving pictures – Admission.
G.S. 105-42	Private detectives and investigators.
G.S. 105-45	Collecting agencies.
G.S. 105-46	Undertakers and retail dealers in coffins.
G.S. 105-50	Pawnbrokers.
G.S. 105-51.1	Alarm systems.
G.S. 105-53	Peddlers, itinerant merchants, and specialty market operators.
G.S. 105-54	Contractors and construction companies.
G.S. 105-55	Installing elevators and automatic sprinkler systems.
G.S. 105-61	Hotels, motels, tourist courts and tourist homes.
G.S. 105-62	Restaurants.
G.S. 105-65	Music machines.
G.S. 105-65.1	Merchandising dispensers and weighing machines.
G.S. 105-66.1	Electronic video games.
G.S. 105-74	Pressing clubs, dry cleaning plants, and hat blockers.

G.S. 105-77	Tobacco warehouses.
G.S. 105-80	Firearms dealers and dealers in other weapons.
G.S. 105-85	Laundries.
G.S. 105-86	Outdoor advertising.
G.S. 105-89	Automobiles, wholesale supply dealers, and service stations.
G.S. 105-89.1	Motorcycle dealers.
G.S. 105-90	Emigrant and employment agents.
G.S. 105-91	Plumbers, heating contractors, and electricians.
G.S. 105-97	Manufacturers of ice cream.
G.S. 105-98	Branch or chain stores.
G.S. 105-99	Wholesale distributors of motor fuels.
G.S. 105-102.1	Certain cooperative associations.
G.S. 105-102.5	General business license.

(b) Barbershop and Salon Restriction. – A privilege license tax levied by a city on a barbershop or a beauty salon may not exceed two dollars and fifty cents ($2.50) for each barber, manicurist, cosmetologist, beautician, or other operator employed in the barbershop or beauty salon.

(c) ~~Piped Gas Restriction.~~ Prohibition.– A city may not ~~levy a privilege license tax on a person who is engaged in the business of supplying piped natural gas and is subject to tax under Article 5E of Chapter 105 of the General Statutes.~~ impose a license, franchise, or privilege tax on a person engaged in any of the businesses listed in this subsection. These businesses are subject to a State tax for which the city receives a share of the tax revenue.

(1) Supplying piped natural gas taxed under Article 5E of Chapter 105 of the General Statutes.

(2) Providing telecommunications service taxed under G.S. 105-164.4(a)(4c).

(3) Providing video programming taxed under G.S. 105-164.4(a)(6).

~~(d) Telecommunications Restriction. A city may not impose a license, franchise, or privilege tax on a company taxed under G.S. 105-164.4(a)(4c).~~"

SECTION 13. G.S. 160A-214 is repealed.

SECTION 14. G.S. 160A-319(a) reads as rewritten:

"(a) A city shall have authority to grant upon reasonable terms franchises for ~~the operation within the city of~~ a telephone system and any of the enterprises listed in ~~G.S. 160A-311 and for the operation of telephone systems.~~ G.S. 160A-311, except a cable television system. A franchise granted by a city authorizes the operation of the franchised activity within the city. No franchise shall be granted for a period of more than 60 years, except that a franchise for solid waste collection or disposal systems and facilities shall not be granted for a period of more than 30 ~~years and cable television franchises shall not be granted for a period of more than 20~~ years. Except as otherwise provided by law, when a city operates an enterprise, or upon granting a franchise, a city may by ordinance make it unlawful to operate an enterprise without a franchise."

SECTION 15. An award of a State-issued franchise under Article 42 of Chapter 66 of the General Statutes, as enacted by this act, does not affect a determination of whether video programming provided by the holder of the franchise is considered cable service provided over a cable system under federal law or under a state law that applies substantially the same definitions of "cable service" and "cable system" as federal law.

SECTION 16. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 17. The Revenue Laws Study Committee must review the effect Article 42 of Chapter 66, as enacted by this act, has on the following to determine if any changes to the law are needed and must report its findings to the 2009 Session of the North Carolina General Assembly:

(1) Competition in video programming services.

(2) The number of cable service subscribers, the price of cable service by service tier, and the technology used to deliver the service.

(3) The deployment of broadband in the State.

SECTION 18. This act becomes effective January 1, 2007. Sections 7 and 8 of this act apply to the distribution made within 75 days after March 31, 2007, for the quarter starting January 1, 2007.

HB 2047 (PCS): VIDEO SERVICE COMPETITION ACT

June 1, 2006

Executive Summary for the House Finance Meeting

- **Provides equal taxation of same service**
  - Defines video programming to include all programming comparable to television broadcast, regardless of provider
  - Repeals local authority to impose local franchise tax
  - Applies existing 7% State sales tax to video programming service
- **Promotes competition in video programming service**
  - Requires State franchising of cable service providers
  - Repeals local authority to award or renew a local cable franchise, effective January 1, 2007
- **Preserves local government revenue stream**
  - Distributes share of sales tax imposed on video programming to counties and cities
  - Distribution of video programming revenues based on the amount of cable franchise tax imposed during the first six months of fiscal year 06-07 PLUS any subscriber revenues imposed during the first six months of fiscal year 06-07. Subsequent annual distributions adjusted for population growth
- **Protects PEG Channels**
  - Provides $2 million for additional PEG support through direct distribution and through grants
  - Includes per subscriber revenue in local government distribution base and requires local governments that imposed a subscriber fee to use the amount of revenue derived from that fee for PEG channel operation and support
  - Sets number, service tier placement, and transmission quality of PEG channels
  - Provides mechanism to acquire additional PEG channels
  - Provides equipment assistance for transmitting PEG channel signals
- **Requires cable service provider to provide free basic service to local public buildings**
- **Preserves local regulation of rights-of-way**
- **Provides competitive neutrality**
  - Existing local franchises cannot be renewed
  - Opt out provision for cable service providers under existing local agreements when one or more households in the franchise area may be served by both the existing provider and the holder of a State-issued franchise
- **Prohibits discrimination**
  - Bill specifically prohibits discrimination of service based on income or race
  - Violation of the law declared an unfair or deceptive trade practice
- **Preserves service standards**
  - Franchisee must comply with customer service standards and emergency alert requirements of FCC
  - Consumer Protection Division of the Attorney General's Office will receive and respond to complaints

HOUSE BILL 2047:
Video Service Competition Act

BILL ANALYSIS

Committee:	House Finance	**Date:**	May 29, 2006
Introduced by:	Reps. Carney, Luebke, McComas, Wainwright	**Summary by:**	Cindy Avrette Committee Counsel
Version:	PCS to First Edition H2047-CSRB		

SUMMARY: House Bill 2047 would provide equal taxation of video programming services regardless of how the service is delivered and it would replace locally negotiated franchises of cable service provided over a cable system with a State-issued franchise. The PCS for the bill addresses various issues and concerns raised by parties interested in the bill. The bill would become effective January 1, 2007.

CURRENT LAW: North Carolina began taxing communication services when the technologies enabling the services were separate and distinct technologies and the providers of the services were separate and distinct taxpayers. Over the past several years, the technology used to provide these services has converged so that the line between the services is no longer separate and distinct. The Current Operations and Capital Improvements Appropriations Act of 2005 directed the Revenue Laws Study Committee to study the equity of taxation of providers of cable service, direct-to-home satellite service, satellite digital audio radio service, video programming service, and data service.

The Revenue Laws Study Committee spent a considerable amount of time on this issue.[1] The Committee found that the State taxes these services based upon who provides the service rather than the service itself. Despite the General Assembly's repeated attempts to provide tax equity among these providers, it is debatable whether that has been accomplished:

- The State imposes a 7% State sales tax on telecommunication services and it earmarks a percentage of the revenues to cities. The amount each city receives is based upon a per capita statutory formula. State law prohibits counties and cities from imposing local taxes on this service.
- The State imposes a 7% State sales tax on direct-to-home satellite service. Federal law prohibits a local tax on this service and it prohibits local regulation of this service. The tax revenue is not shared with local governments.
- The State imposes a 4.5% State sales tax and a 2.5% local sales tax on digital audio radio service.
- The State imposes a 7% State sales tax on cable services, with a credit equal to the amount of local franchise tax paid on the service. Counties and cities may impose a local franchise tax on this service; the tax may not exceed 5% of gross receipts. Cable service has been subject to local regulation since 1973. The local regulation of cable services varies from county to county and from city to city, depending on the terms of the locally negotiated agreements. The definition of

[1] The Revenue Laws Study Committee staff met separately with representatives of the cable industry, the telephone industry, the cable administrators, and the counties and cities. It also held a series of four meetings with the all the affected parties and solicited comments from the parties on numerous occasions. The staff prepared a survey given to all the local governments in the State to determine their franchise fee collections and other nonmonetary contributions received in accordance with their cable franchise agreements.

'gross receipts' may also vary from agreement to agreement. The cable boxes rented to customers is subject to the State and local sales tax. The gross receipts from the rental of these boxes may also be included in the company's gross receipts for local franchise tax purposes, depending upon how the term is defined in the local agreement.

The Revenue Laws Study Committee acknowledged that the method of taxation should not provide one provider of a service with a competitive advantage over another. The Committee expressed a goal to establish a method of taxation that applies equally to the same service, regardless of who provides it. The Committee established the following principles:

- Equal taxation of the same service.
- A tax system that is easy to administer.
- A tax and regulatory system that does not impede competition.
- Equal compensation to cities for the use of their public rights-of-way.
- PEG channels service a public purpose and should be supported.

Based upon those principles, it desired a bill that met the following goals:

- Applies the principles stated above.
- Contains no tax or fee increase.
- Preserves local government revenue stream.
- Promotes competition in the marketplace.
- Promotes deployment of broadband as a basic communication tool.

North Carolina is not alone in grappling with the issue of how to tax and regulate telecommunications and video programming services. Congress as well as other states is considering legislation on this issue. At this time, at least four states have enacted legislation changing the regulation and taxation of telecommunications and video programming services and at least eight other states have legislation pending on the issue.

BILL ANALYSIS: House Bill 2047, *Video Service Competition Act,* establishes uniform taxes for video programming services and seeks to promote consumer choice. It establishes equal taxation of the same service by applying the State 7% sales tax to all video programming services, repealing the local authority to impose a local franchise tax, and repealing the sales tax credit allowed to cable companies for local franchise tax paid. It preserves the local government revenue stream by distributing part of the sales tax revenues from telecommunications and video programming services to the counties and cities. The distribution formula is based upon the amount of cable franchise tax imposed during the first six months of fiscal year 06-07 plus any subscriber fees imposed during that same period.

The bill promotes competition by providing a State franchise process, in lieu of the current locally negotiated franchise agreements. It seeks to ensure competitive neutrality by allowing cable providers to opt-out of existing local agreements when one or more households in the franchise area may be served by both the existing provider and the holder of a State-issued franchise. The bill specifically prohibits discrimination in the provision of video programming services and declares a violation of this law to be an unfair or deceptive trade practice. The holder of a State-issued franchise must comply with customer service and emergency alert requirements established by the Federal Communications Commission. The

bill designates the Consumer Protection Division of the Attorney General's Office as the State agency to receive customer complaints regarding video programming services.

The bill preserves local regulation of public rights-of-way and provides for PEG channel support and growth. The bill requires local governments that imposed subscriber fees to use a portion of the amount of revenue distributed to it for PEG channel operation and support. In addition to this mandated funding, the bill provides $2 million for supplemental PEG support through direct appropriation for PEG channel support and operation and through grants. The bill provides that existing franchise agreements will determine the number, service tier placement, and transmission quality required of PEG channels under a State-issued franchise. In the absence of an existing agreement, the number of PEG channels a county or city may have is determined by the area's population. A local entity may acquire additional PEG channels, with the maximum number of channels set at seven. The bill also requires cable service providers to provide free basic service to local public buildings.

Section-by-section analysis of the bill:

Section 1 of the bill replaces the authorization to counties and cities to award a franchise for cable service with a State franchising authority, effective January 1, 2007. The bill provides that a county or city may not award or renew a franchise for cable service after this date. The bill designates the Secretary of State as the exclusive franchising authority in the State for cable service provided over a cable system. The terms 'cable service' and 'cable system' track the definitions in federal law. The bill would require the franchising of cable service that is required to be franchised under federal law. The bill does not expand the services that need to be franchised beyond those currently required to be franchised under federal law.

State issued franchise. The State franchise process is one of notice, not regulation. To receive a State-issued franchise, a person must file a notice of franchise with the Secretary of State and pay a fee of $125. A person who files a notice of franchise with the Secretary must begin providing cable service within 120 days after the notice is filed. If service is not provided within this period, the notice of franchise terminates 130 days after it was filed. The notice of franchise must include the applicant's name and principal place of business, a description and map of the area to be served, a list of each county and city in which the described service area is located, and a schedule indicating when service is expected to be offered in the service area. A person who fails to file a notice of franchise is subject to a civil penalty of $250 a day until the document is filed.

Notice of Service. Once cable service is provided, the holder of a State-issued franchise must file a notice of service with the Secretary within 10 days after the cable service begins. A person who fails to file a notice of service is subject to a civil penalty of $250 a day until the document is filed. The notice of service must include the effective date of the notice of franchise for that area, a description and map of the service area, and a statement that cable service has begun in the service area.

Annual Service Report. The holder of a State-issued franchise must also file an annual service report on or before July 31 of each year and pay a fee of $20. A person who fails to file an annual service report is subject to a civil penalty of $250 a day until the document is filed. The annual service report must include all of the following:

- The effective date of a notice of franchise for that area.
- A description and map of the service area.
- The approximate number of households in the service area.
- A description and map of the households passed in the service area as of July 1.

- The percentage of households passed in the service area as of July 1.
- The percentage of households passed in the service area as of July 1 of any preceding year for which a report was required.
- A report indicating the extent to which the holder has met the customer service requirements.
- A schedule indicating when service is expected to be offered in the service area, to the extent the schedule differs from one included in the notice of franchise or in a report previously submitted, and an explanation of the reason for the new schedule.

Existing agreements. The State franchising authority does not affect a local franchise agreement that was awarded by a county or city and is in effect on January 1, 2007, except as follows:

- Effective January 1, 2007, gross revenue used to calculate the payment of a local franchise tax does not include gross receipts from cable service subject to the State sales tax.
- A local franchise agreement may be terminated when a notice of service indicates that one or more households in the franchise area of the existing agreement are passed by both the cable provider under the existing agreement and the holder of a State-issued franchise.

Termination of existing agreements. To terminate an existing agreement, a cable service provider must file a notice of termination with the affected county or city and file a notice of franchise with the Secretary of State. A notice of termination becomes effective at the end of a month. A termination of an existing agreement ends the obligations under the agreement and under any local cable regulatory ordinance as of the effective date of the termination.

Service standards and requirements. The bill specifically prohibits discrimination in the provision of the cable service. A violation of the law is considered an unfair and deceptive trade practice. In determining whether a cable service provider has violated the law, the following factors may be considered: the length of time since the provider filed the notice of service for the area, the cost of providing service to an area, technological impediments to providing service to an area, the inability to obtain access to property required to provide service to an area, and competitive pressure to respond to service offered by another cable provider. The information in the annual service reports may be used to help determine whether a violation of the law has occurred.

A cable service provider must comply with the customer service requirements and emergency alert requirements established by the Federal Communications Commission. The Consumer Protection Division of the Attorney General's Office is designated as the State agency to receive and respond to consumer complaints. A cable service provider who fails to resolve a customer complaint raised by the Division in a reasonable time and manner is subject to a civil penalty of $100 a day until the complaint is resolved.

PEG channels. The bill requires a cable service provider operating under a State-issued franchise to include the transmission of PEG channels. A county or city may make a written request for PEG channel capacity and the cable service provider must provide the requested capacity within 120 days after it receives the request. If the area is included in both the franchise area of an existing agreement and the service area of a State-issued franchise, then the terms of the existing agreement as of the filing date of the notice of franchise determine the number, service tier placement, and transmission quality of the initial PEG channels required under the State-issued franchise. If no existing agreement includes any part of the service area of a State-issued franchise, then the number of PEG channels required under the State-issued franchise depends upon the population of the city in which part or all of the service area is located. If the city's population is at least 50,000, the provider must provide up to three PEG channels. If

the city's population is less than 50,000, the provider must provide up to two PEG channels. The PEG channels must be placed on a basic service tier and the transmission quality must be equivalent to those of the closest city covered by an existing agreement. In no event may a city or county have fewer PEG channels than would be allowed to an area that is not covered under an existing agreement.

The maximum number of PEG channels a cable service provider must provide to a county or city is seven. If a county or city does not have seven PEG channels, including the initial PEG channels, it may request additional channels. The additional channels may be provided on any service tier and the transmission quality of the additional channels must be at least equivalent to the transmission quality of the other channels provided. The PEG channels operated by a county or city must meet the following programming requirements in order for the county or city to obtain additional channels:

- All of the PEG channels must have scheduled programming for at least 80% of the time for at least 8 hours a day.
- The programming content of each PEG channel must not repeat more than 15% of the programming content on any of the other PEG channels.
- No more than 15% of the programming content on any PEG channel may be character-generated programming.

A cable service provider is responsible only for the transmission of a PEG channel. A county or city to which the PEG channel is provided is responsible for the operation and content of the channel.

PEG channel grants. The bill establishes the PEG Channel Fund as an interest-bearing special revenue fund. The purpose of the Fund is to provide matching grants to counties and cities for PEG channel support. The e-NC Authority administers the Fund.[2] A grant may only be used for capital expenditures necessary to provide PEG channels. The size of a grant may not exceed $20,000 and an applicant may receive no more than one grant per fiscal year. The applicant must match the grant on a dollar-for-dollar basis. The Authority must publish an annual report on the grants awarded from the Fund.

Service to public buildings. At the written request of a county or city, a cable service provider operating under a State-issued franchise must provide cable service without charge to a public building located within 125 feet of the provider's cable system. The required service is the basic, or lowest-priced, service the provider offers to customers. Only one service outlet is required for a building. A public building is a building used as a public school, a charter school, a library, or a function of the county or city.

Sections 2 and 3 of the bill would apply the State sales tax equally to all video programming services, regardless of who provides the service. Section 2 defines the term 'video programming' to be programming provided by, or generally considered comparable to programming provided by, a television broadcast station, regardless of the method of delivery. The term is broader than 'cable service provided over a cable system'. It would include cable services offered over private rights-of-way as well as those offered over public rights-of-way. Section 3 imposes the State's 7% sales tax on the gross receipts derived from providing video programming to a subscriber in this State.[3]

Sections 4 through 6 of the bill would make technical and conforming changes to the provisions governing bundled transactions.

---

[2] The e-NC Authority is charged with managing and promoting high-speed broadband Internet access.

[3] Although the term video programming includes broadcast services, the provision of these services would not be taxed unless the provider sells the service to subscribers and thus realizes gross receipts from the provision of the services.

Sections 7 and 8 of the bill would distribute a share of the sales tax revenues imposed on video programming to counties and cities. The revenue distributed is local revenue, not a State expenditure. Therefore, the Governor may not reduce or withhold the distribution.

Section 7 would increase the amount of the sales tax revenue derived from telecommunication services distributed to cities and counties. Section 8 would distribute the following portion of the gross receipts derived from video programming to counties and cities: 22.61% of the net proceeds collected on video programming, other than on direct-to-home services and 37% of the net proceeds collected on direct-to-home satellite service.[4] The distributions would be made quarterly.

The amount distributed would be allocated as follows:

- Two million dollars ($2,000,000) a year would be distributed as supplement PEG channel support. A portion of this amount will be distributed to counties and cities with qualifying PEG channels.[5] The amount per qualifying PEG channel would be $25,000. A county or city could not receive supplemental PEG channel support for more than three PEG channels. The amount distributed to a county or city as supplemental PEG channel support must be used by it for the operation and support of PEG channels. If the amount to be distributed for qualifying PEG channels in a fiscal year is less than $2,000,000, the Secretary must credit the excess amount to the PEG Channel Fund to be used for matching local grants for PEG channel support.
- The remainder of the revenues to be distributed would be allocated between the counties and cities on a proportional basis. The proportionate share of a county or city is the base amount for the county or city compared to the base amount for all counties and cities. The base amount for a county or city that did not impose a cable franchise tax before July 1, 2006, would be $2 times the most recent annual population estimate for that county or city. The population of the county would be the population of its unincorporated areas plus the population of an ineligible city in the county. The base amount for a county or city that imposed a cable franchise tax before July 1, 2006, is the amount of cable franchise tax and subscriber fee revenue the county or city certifies to the Secretary it imposed during the first six months of fiscal year 06-07. For subsequent fiscal years, the amount each county or city receives would be adjusted based upon its percentage change in population.

A county or city that imposed subscriber fee revenue must use a portion of the amount distributed to it for PEG channel operation and support. The amount it must use for this purpose is two times the amount of revenue it certified to the Secretary it imposed as subscriber fees during the first six months of fiscal year 06-07. The remainder of the money distributed to counties and cities may be used for any public purpose.

Section 9 would repeal the credit against the State sales tax on cable services for local franchise tax paid since the local franchise tax is repealed in Section 13.

Section 10 would repeal the county's authority to franchise cable television services.

Section 11 would repeal the county's authority to impose a franchise tax on cable services.

Section 12 would prohibit a city from imposing a tax on video programming services.

Section 13 would repeal the city's authority to impose a franchise tax on cable services.

---

[4] This percentage distribution from satellite TV services mirrors the 2.5% local sales tax on satellite radio services.
[5] A 'qualifying PEG channel' is a channel that meets the programming requirements under G.S. 66-357(d).

Section 14 would clarify that a city may not impose a fee or charge for use of the public right-of-way unless the fee or charge applies uniformly to all non-municipal users of the public right-of-way.

Section 15 would repeal the city's authority to franchise cable television services.

Section 16 would require a county or city desiring to receive a distribution for supplemental PEG channel support under G.S. 105-164.44I(c) to certify to the Secretary of Revenue by January 15, 2007, the number of qualifying PEG channels it operates.

Section 17 recognizes that the staffing needs of the Consumer Protection Division of the Attorney General's Office may change if this bill is enacted. However, the section also finds that the impact of this bill on the staffing needs of the Division is not clear. This section requests the Office of the Attorney General to monitor the number and type of cable service complaints it receives from customers and to determine whether the Division needs additional staff to fulfill the duty imposed by this bill on it. The Office of the Attorney General must make a report concerning its staffing needs to the Fiscal Research Division by April 1, 2007.

Section 18 would provide that an award of a State-issued franchise does not affect a determination of whether video programming provided by the holder of the franchise is considered cable service provided over a cable system under federal law.

Section 19 would provide that the provisions of this act are severable.

Section 20 would direct the Revenue Laws Study Committee to review the effects of this act on competition in video programming services, the number of cable service subscribers, the price of cable service by service tier, the technology used to deliver the service, and the deployment of broadband in the State. The Committee would see if any changes to the law are necessary and would report its findings and recommendations to the 2009 General Assembly.

EFFECTIVE DATE: The bill becomes effective January 1, 2007.

H2047e1-SMRB-CSRB

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

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

DATE: May 31, 2006

TO: Representatives Luebke, McComas, Wainwright, and Carney

FROM: Brenna Erford
Fiscal Research Division

RE: House Bill 2047 (Proposed Committee Substitute to First Edition)

FISCAL IMPACT

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

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES:					
General Fund	No Impact to General Fund				
Local governments	Possible net gain up to $3.3 million; see Assumptions & Methodology				
EXPENDITURES:	See Assumptions & Methodology				
POSITIONS (cumulative):	See Assumptions & Methodology				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Department of Revenue; Consumer Protection Division of the NC Office of the Attorney General; NC Secretary of State; NC Department of Revenue; e-NC Authority; local governments

EFFECTIVE DATE: January 1, 2007

BILL SUMMARY: The Consumer Choice in Cable and Uniform Taxation of Video Programming Services Act:

- Establishes a statewide video service franchising process;
- Makes changes to the regulatory treatment of existing local cable franchises;
- Eliminates local governments' authority to assess and collect cable franchise fees;
- Replaces local revenues from franchise fees with a new distribution of shared sales tax collections from telecommunications, cable service, and satellite television service;
- Removes the state tax credit for franchise fees paid to local governments;
- Provides for a proportional tax distribution to local governments based on previous revenues from cable, including franchise fees and per subscriber charges;
- Provides for public, educational, and governmental (PEG) channel funding via several mechanisms;
- Designates the North Carolina Secretary of State as the exclusive statewide video service franchising authority;
- Designates the Consumer Protection Division of the North Carolina Office of the Attorney General as the agency responsible for handling consumer complaints.

This bill does not raise taxes on cable service, telecommunications, or home satellite television services. All these services remain subject to the general shared sales tax rate of 7%. However, this bill significantly alters the calculation of the local share of shared sales tax and creates an entirely new distribution method for the local share of shared sales tax collections. The bill does three things that significantly alter the composition of the local share:

- Local governments will no longer be able to assess and collect cable franchise fees. This revenue will be replaced by the local distribution scheme set forth in the bill. Under this proposal, local governments will receive a portion of sales tax collections from cable service equal to 22.61%, an increased portion of the existing telecommunications sales tax, and a share of sales tax collections on satellite television service.
- The tax credit equal to the amount of franchise fees paid to local governments created in 2005 is eliminated.
- Local governments will effectively receive a larger portion of state sales tax collections on telecommunications. This new portion will be equal to 7.23% of total telecommunications sales tax collections, which is equivalent to 22.61% of total sales tax collections for telecommunications less the local share already received pursuant to G.S. 105-164.44F according to Fiscal Research estimates.
- Local governments will be granted a share of sales tax collections from home satellite television service equal to 2.5% of the 7% general sales tax, or approximately 37% of sales tax collections.

ASSUMPTIONS AND METHODOLOGY: Fiscal Research estimates that all North Carolina local governments will be effectively held harmless by this change. The sum of the local shares of these three industries (approximately $65.3 million) is estimated to exceed actual aggregate local collections of cable franchise fees and per subscriber charges by approximately $3.3 million.

Current Law and Estimated Tax Collections by Industry

During the 2005 session, cable service, telecommunications, and home satellite television service were brought under the general state sales tax rate of 7%.

The chart below shows estimated total sales tax collections for cable service, telecommunications, and home satellite television service for FY 2005-06. These amounts have been adjusted to reflect the 2005 rate changes. The municipal share amount shows the amount received or collected by local governments under current law.

Estimated Sales Tax Collections by Industry and State/Local Share under Current Law			
	2005-06 Adjusted		
	Net collections	State share	Local share*
Telecommunications sales tax	395,714,195	334,850,718	60,863,477
Cable service**	91,350,000	26,100,000	65,250,000
Satellite	43,220,000	43,220,000	N/A
Total, all industries	530,284,195	404,170,718	126,113,477

*Local share reflects 18.03% of total telecommunications sales tax less the "freeze deduction" as required in G.S. 105-164.44F

**Net collections for cable have been estimated from municipal share. The local share ($65.3 million) reflects estimated total cable revenues collected directly by local governments, not by the state.

- For telecommunications, the $60.9 million local share is the 18.03% of telecommunications sales tax less a "freeze distribution" created under G.S. 105-164.44F. This portion of local share is not altered by this legislation.
- For cable service, the local share shown ($65.3 million) is the estimated amount of cable revenues assessed and collected by local governments in 2005. Currently this money is collected directly by local governments, primarily in the form of cable franchise fees. Under federal law, local government units can assess a franchise fee of up to 5% on a locally negotiated definition of gross revenues. This is also the estimated amount of the cable tax credit.
- Sales tax collections from home satellite television service are not currently shared with local governments.

The following sections outline the change in calculation of the local share of cable, telecommunications, and satellite sales tax collections as well as the change in distribution to local governments as it pertains to each industry.

Telecommunications

In 2005, the tax on telecommunications was increased from 6.0% to the general sales tax rate of 7.0%. The change was effective Oct. 1, 2005. Under G.S. 105-164.44F local governments receive a per capita distribution of 18.03% of sales tax collections on telecommunications service less a "freeze deduction" of $2,620,948 on a quarterly basis. This legislation does not alter this portion of the local government share of sales tax on telecommunications. Under this bill, local governments will continue to receive a distribution of total sales tax collections on telecommunications pursuant to G.S. 105-164.44F, plus an additional share of collections equal to 7.23% of gross sales tax collections on telecommunications. This additional share of collections is estimated at $28.6 million based on 2005-06 estimated collections.

Cable Service

Effective January 1, 2006, the general sales tax rate of 7% was applied to cable service, which had previously only been taxed at the local level. Taxpayers also receive an approximate 5% credit against this tax for local cable franchise taxes paid,[1] which is removed by the bill.

At this time, the two months of collections data available for this tax expenditure are not sufficient to estimate the credit's actual cost, so this memo assumes an estimated $65.3 million for the cost of the cable tax credit.[2] However, survey research conducted by the Fiscal Research Division suggests that the actual amount of cable franchise fees and per subscriber charges collected by North Carolina local governments is approximately $62 million, which suggests that local governments may gain up to $3.3 million in new money from this legislation.

The local share of cable sales tax collections under the distribution established by this bill is estimated at $20.7 million based on 2005-06 estimated collections.

Satellite

The tax on home satellite television service was increased from 5.0% to 7.0% effective Oct. 1, 2005. Currently, all collections of this tax go to the General Fund. Under this legislation, 37% (or 2.5% of the 7.0% general sales tax rate) of satellite tax collections would be shared with local governments.

Based on early Department of Revenue data, satellite tax collections are exhibiting a rapid rate of growth, especially in relation to collections from cable service. This estimate for satellite uses a conservative annual growth rate of 8%.

Fiscal Research estimates that sales tax collections for satellite will be approximately $43.2 million for FY 2005-06. The 37% local share would be $16.0 million based on 2005-06 estimated collections.

Proposed Local Share of Sales Tax Collections by Industry

The chart below illustrates the local share of sales tax collections by industry. **This local share calculation is intended to hold local governments whole with the elimination of local franchise fees and to supply local governments with funds for PEG channel support.** The $65.3 million local share calculated through this distribution equals the estimated 2005 cable franchise fee revenues that would be foregone under this legislation.

---

[1] Federal law caps local franchise taxes at 5% of gross revenues, suggesting 2% of the 7% state sales tax goes to the state. Fiscal Research Division survey research suggests that not all North Carolina local governments with cable franchises assess franchise fees at the maximum 5% rate, and that the actual value of the tax credit may be somewhat less than 5% of cable's total sales tax liability.

[2] The cost of the cable tax credit was estimated at $65 million in the 2005 Tax Expenditure Report published by the North Carolina Department of Revenue

Proposed Local Share of Sales Tax Collections by Industry	
2005-06 Adjusted	
Industry	Local share
Telecommunications***	28,607,502
Cable	20,654,235
Subtotal	*49,261,737*
Satellite	15,991,400
Total	**65,253,137**

Distribution of Sales Tax to Local Governments

Under this bill, the combined 7.23% of sales tax collections on telecommunications, 22.61% of state sales tax collections on cable service and 37% of sales tax collections on home satellite television service would be distributed to North Carolina local governments on a proportional basis. The proportionate share for each local government is calculated by dividing a local government's actual collections, including actual franchise fee collections and any per subscriber charges for PEG support, by the total of all local government cable revenues. The base amount of a county or city that imposed a cable franchise tax before July 1, 2006, is the amount of cable franchise tax and subscriber fee revenue the county or city certifies to the Secretary was imposed during the first six months of FY 2006-07 (July 1, 2006 through January 1, 2007). The purpose of this time period is to capture the effect of franchise fee rate increases enacted by local governments for the 2006-07 fiscal year. The bill also provides that counties or cities that did not impose a cable franchise fee before July 1, 2006, are entitled to a share equal to $2.00 times the most recent population estimate for the city or county in question. Fiscal Research estimates that sixty-five cities and two counties do not currently impose a franchise fee. The total population of those sixty-seven local governments is approximately $155,780, which at a $2.00 pro rate share creates a $311,560 addition into the distribution.[3]

In subsequent years, the proportionate share for each municipality will be recalculated to reflect per capita growth. The distribution would be effective January 1, 2007.

Based on available data, Fiscal Research believes that under this distribution scheme no municipality will receive less revenue than they would have received

Public, Educational, and Governmental (PEG) Channel Support

This bill contains three mechanisms to provide financial support for public, educational, and governmental (PEG) channels. Local governments are required to certify revenues received from franchise fees and from per subscriber charges to the Department of Revenue. If a local government has been receiving per subscriber charges for PEG support, a portion of the revenue that local government receives from the Department of Revenue via the distribution created in this bill equal to the amount of per subscriber fees collected must be used for PEG channel support.

[3] This change does not reduce the $2 million available for PEG funding via lump-sum payments and grants, but it slightly reduces the residual unreserved amount that will be available for distribution directly to local governments.

In addition, the bill allows local governments that operate PEG channels providing local programming to collect $25,000 per channel, up to 3 channels, per year in the form of four quarterly installments of $6,250. These funds are to be deducted from the total local share of sales tax collections before the local distribution formula is applied. The bill caps the amount of annual PEG support to local governments at $2 million. Reliable data on the number of qualifying PEG channels in North Carolina is not available, but based on discussions with public programming interest groups, this memo assumes there are 36 PEG channels currently operating in North Carolina that would qualify for this funding. In total, the impact of this provision is estimated at $900,000 annually.

The bill also creates the PEG Grant Fund. Any funds **not** disbursed to local governments for PEG support ($25,000 per qualifying PEG channel), up to the $2 million limit, are to be deposited in the PEG Grant Fund for the purpose of making grants to local governments to fund capital expenditures for PEG channels. The e-NC Authority is responsible for administering the fund and awarding grants subject to the following limitations:

- The size of a grant may not exceed $20,000
- The local government applicant must match the grant on a dollar-for-dollar basis
- The grant may only be used for capital expenditures necessary to provide PEG channels
- An applicant may only receive one grant per year

In addition, the e-NC Authority must publish an annual report on grants awarded. The report must list each grant recipient, the amount of the grant, and the purpose of the grant.

The chart below provides detail on the total amount of revenue set aside for PEG channel support pursuant to this legislation. **The per subscriber fee portion of these funds ($1,195,888) is included in the proportional distribution; therefore PEG funding does not utilize the entire $3.3 million possible gain to local governments.**

Total funds to local governments restricted for PEG support		
Per subscriber fees	$	1,195,888
PEG support funding ($25,000 per qualifying channel)	$	900,000
Grants from PEG Grant Fund	$	1,100,000
Total PEG funding	**$**	**3,195,888**

State Franchising Authority

The Secretary of State is named as the exclusive state franchising authority for cable service provided over a cable system. Applicants must file a notice of franchise with the Secretary and pay a filing fee equal to the filing fee for articles of incorporation, currently $125. A person who files a notice of franchise is required to begin providing service in the designated area within 120 days of filing. In addition, a person providing service must submit an annual service report on or before July 31 of each year. A person who fails to file a notice of franchise, a notice of service, or an annual service report is subject to a civil penalty of $250 per day payable to the Secretary, clear proceeds of which must be remitted to the Civil Penalty and Forfeiture Fund.

Consumer Complaints

The Consumer Protection Division of the North Carolina Office of the Attorney General is named as the agency responsible for addressing consumer complaints. At this time, Fiscal Research does not have any data available on the cost of this change or any positions that may be requested as a result of this change.

Conclusion

The chart below contrasts current law with the proposed tax changes in this bill and illustrates how the total shared sales tax revenue to both the state and local governments is held the same.

Comparison of State and Local Share under Current and Proposed Law						
	(in millions)					
	Current law		**Proposed**		**Change**	
	State	Local	State	Local	State	Local
Telecommunications	334.8	60.9	306.2	89.5	(28.6)	28.6
Cable service	26.1	65.3	70.7	20.7	44.6	(44.6)
Satellite	43.2	-	27.2	16.0	(16.0)	16.0
Total	**404.1**	**126.2**	**404.1**	**126.2**	-	-

SOURCES OF DATA: North Carolina Department of Revenue, North Carolina Fiscal Research Division, North Carolina State Data Center, Federal Communications Commission, U.S. Census Bureau, North Carolina Utilities Commission

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Brenna Erford

APPROVED BY:

DATE:

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 2047*

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

H2047-ARB-79 [v.8]

Date June 26 ,2006

Comm. Sub. [NO]
Amends Title [NO]
H2047-CSRBx-48

Representative Wainwright

moves to amend the bill on page 2, line 17 by rewriting the line to read:
"amount set in G.S. 57C-1-22 for filing articles of organization.";

And on page 2, line 20, by rewriting the line to read:
"(1) The applicant's name, principal place of business, mailing address, physical address, telephone number, and e-mail address.";

And on page 3, lines 32 and 33, by rewriting the lines to read:
"area described in the document and to the registered agent of any cable service provider that is providing cable service under an existing agreement in the service area described in the document.

The provisions of Article 2 of Chapter 55D of the General Statutes apply to the submission of a document under this Article. A document filed under this Article is a public record as defined in G.S. 132-1. The Secretary must post a document filed under this Article on its Internet website or indicate on its Internet website that the document has been filed and is available for inspection.";

And on page 3, line 11, by rewriting the line to read:
"be accompanied by a fee in the amount set in G.S. 57C-1-22 for filing an annual";

And on page 3, lines 38 through 43, by rewriting the lines to read:
"(b) Forfeiture. – A person who offers cable service over a cable system without filing a notice of franchise or a notice of service as required by this Article is subject to forfeiture of the revenue received during the period of noncompliance from subscribers to the cable service. This forfeiture does not affect the liability of the cable service

provider for sales tax due under G.S. 105-164.4 on cable service. A cable service provider whose area includes the area in which a person is providing cable service without complying with the notice of franchise and notice of service requirements may bring a civil action for forfeiture. The amount required to be forfeited in the action must be remitted to the Civil Penalty and Forfeiture Fund established in G.S. 115C-457.2.";

And on page 5, lines 5 through 9, by rewriting the lines to read:
"Office is designated as the State agency to receive and respond to customer complaints that the customer's cable service provider has failed to comply with the federal customer service requirements or the terms and conditions of the provider's agreement with the customer. To resolve one of these complaints, the Attorney General's Office may compel a cable service provider to comply with the federal customer service requirements and the terms and conditions of the provider's agreement with the customer and may assess a civil penalty on the cable service provider if the provider fails to address in a timely and reasonable manner a customer complaint raised by the Consumer Protection Division. The amount of the penalty is two hundred fifty dollars ($250.00) a day until the cable service provider complies with the customer service requirement or contract term at issue in the complaint. The Division may not impose a penalty under this subsection unless it has ";

And on page 5, lines 15 through 22, by rewriting the lines to read:
"include the following statement on the customer's bill: "If you have a complaint about your cable service, you should first contact customer service at the following telephone number: (insert the cable service provider's customer service telephone number). If the cable service provider does not satisfactorily resolve your complaint, contact the Consumer Protection Division of the Attorney General's Office of the State of North Carolina at 9001 Mail Service Center, Raleigh, NC 27699-9001, at www.ncdoj.com, or at 1-877-5-NO-SCAM.";

And on page 5, lines 36 and 39, and page 6, line 4, by deleting "January 1, 2007," and substituting "July 1, 2006,";

And on page 6, line 14, by adding the following at the end of that line to read:

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 2047*

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

H2047-ARB-79 [v.8]

"Each county and city whose PEG channels are served by the same cable system headend must cooperate with each other and with the cable system provider in sharing the capacity needed to provide the PEG channels.";

And on page 7, line 19, by adding the following sentence at the beginning of that line to read:

"The terms include compensation for costs incurred in interconnecting.";

And on page 8, line 13, by rewriting the line to read:
"apply to service provided to a residential retail customer apply to the service provided to the public";

And on page 8, line 15, by rewriting the line to read:
"not required to provide inside wiring and is not required to provide service that conflicts with restrictions that apply in a program licensing agreement or another contract. A public building is a building used as".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

ATTACHMENT 12

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 2047*

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

H2047-ARB-80 [v.1]

Date June 6 ,2006

Comm. Sub. [NO]
Amends Title [NO]
H2047-CSRBx-48

Representative Glazier

moves to amend the bill on page 5, line 3, by adding the following at the end of that line to read:

"A cable service provider who fails to comply with the federal customer service requirements and the terms and conditions of the provider's agreement to the customer commits an unfair and deceptive trade practice under G.S. 75-1.1. In addition to the remedies provided in Article 1 of Chapter 75 of the General Statutes, the court may terminate the provider's State franchise if the provider is found to have violated G.S. 75-1.1."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED ✓ TABLED _____

ATTACHMENT 13

duplicate 6/6/06

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 2047*

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

H2047-ARB-73 [v.1]

Date June 6 ,2006

Comm. Sub. [NO]
Amends Title [NO]
H2047-CSRBx-48

Representative Bordsen

moves to amend the bill on page 5, line 25 through page 8, line 7, by rewriting the lines to read:

"**§ 66-357. Public Interest Set Aside and PEG channels.**

(a) Application. – This section establishes a five percent (5%) public interest set aside of system capacity to meet local needs and interests in exchange for the use of the public right-of-way. A five percent (5%) public interest set aside of system capacity shall be taken to mean five percent (5%) of the bandwidth at the point on the entire system that possesses the maximum bandwidth. This section applies to a person who provides cable service under a State-issued franchise. It does not apply to a person who provides cable service under an existing agreement.

(b) Local Request. – A county or city must make a written request to the Secretary to utilize the five percent (5%) public interest set aside The request must include a statement describing the county's or city's plan for the service requested and the impact on the five percent (5%) set aside. The cable service provider must provide the requested service within 120 days after it receives the written request from the Secretary.

(c) Existing Public Service Elements of Local Franchises and Provisions for Initial PEG Channels within the 5% Public Interest Set Aside. – If an area is included in both the franchise area of an existing agreement and the service area of a State-issued franchise, the terms of the existing agreement, as of the filing date on the notice of service for the State-issued franchise, determine the public service elements and required number, service tier placement, and transmission quality of initial PEG channels. The cable service provider must provide for existing public interest requirements and provide the number of PEG channels activated under those terms, giving equivalent service tier placement and transmission quality to those channels. The

cable service provider must maintain the same channel designation for a PEG channel unless the service area of the State-issued franchise includes PEG channels that are operated by different counties or cities and those PEG channels have the same channel designation. The expiration of an existing agreement after January 1, 2007, does not affect the requirements in this subsection.

If no existing agreement includes any part of the service area of a State-issued franchise, then the five percent (5%) public interest set aside may be used as ordered by the Secretary. The quality of such services must meet an acceptable standard as determined by the Secretary.

(d) Additional PEG Channels. – A county or city that does not have seven PEG channels, including the initial PEG channels, is eligible for an additional PEG channel if it meets the programming requirements in this subsection. A county or city that has seven PEG channels is not eligible for an additional channel.

A county or city that meets the programming requirements in this subsection may make a written request under subsection (b) of this section for an additional channel. The additional channel may be provided on any service tier. The transmission quality of the additional channel must be at least equivalent to the transmission quality of the other channels provided.

The PEG channels operated by a county or city must meet the following programming requirements for at least 120 continuous days in order for the county or city to obtain an additional channel:

(1) All of the PEG channels must have scheduled programming for at least eighty percent (80%) of the time for at least eight hours a day.

(2) The programming content of each of the PEG channels must not repeat more than fifteen percent (15%) of the programming content on any of the other PEG channels.

(3) No more than fifteen percent (15%) of the programming content on any of the PEG channels may be character-generated programming.

(e) Use of Channels. – If a county or city no longer provides any programming for transmission over a PEG channel it has activated, the channel may be reprogrammed at the cable service provider's discretion. A cable service provider must give at least 60 days notice to a county or city before it reprograms a PEG channel that is not used. The cable service provider must restore a previously lost PEG channel within 120 days of

the date a county or city certifies to the provider a schedule that demonstrates the channel will be used.

(f) Operation of Channels. – A cable service provider is responsible only for the transmission of a PEG channel. The county or city to which the PEG channel is provided is responsible for the operation and content of the channel. A county or city that provides content to a cable service provider for transmission on a PEG channel is considered to have authorized the provider to transmit the content throughout the provider's service area, regardless of whether part of the service area is outside the boundaries of the county or city.

All programming on a PEG channel must be noncommercial. A cable service provider may not brand content on a PEG channel with its logo, name, or other identifying marks. A cable service provider is not required to transmit content on a PEG channel that is branded with the logo, name, or other identifying marks of another cable service provider.

"**§ 66-358. Shared Transmission of Public Interest Services and PEG channels.**

(a) Service. – When a cable service provider operating under a State-issued franchise begins providing cable service in an area, the service must include the transmission of public interest services and PEG channels by one of the following methods:

(1) Interconnection with another cable system operated in its service area. A cable service provider operating in the same service area as a provider under a State-issued franchise must interconnect its cable system on reasonable and competitively neutral terms with the other provider's cable system and may not refuse to interconnect. Interconnection may be accomplished by direct cable, microwave link, satellite, or other method of connection.

(2) Transmission of the signal from each public interest service and PEG channel programmer's origination site, if the origination site is in the provider's service area.

(b) Signal. – All public interest services and PEG channel programming must meet the minimum recognized technical standards for the format used. If a service is programmed in a format a cable service provider cannot transmit without altering the transmission signal, then the cable service provider must do one of the following:

(1) Alter the transmission signal to make it compatible with the technology or protocol the cable service provider uses to deliver its cable service.

(2) Provide to the county or city equipment needed to alter the transmission signal to make it compatible with the technology or protocol the cable service provider uses to deliver its cable service.

"**§ 66-359. Public Interest and Programming Grants.**

(a) Public Interest and Programming Fund. – The Public Interest and PEG Channel Fund is created as an interest-bearing special revenue fund. It consists of revenue allocated to it under G.S. 105-164.44I(b) and any other revenues appropriated to it. The e-NC Authority, created under G.S. 143B-437.46, administer the Fund.

(b) Grants. – Any county, city, school or individual may apply to the e-NC Authority for a grant from the Public Interest and Programming Fund. In awarding grants from the Fund, the e-NC Authority must to the extent possible select applicants from all parts of the State based upon need. Grants from the Fund are subject to the following limitations:

(1) The size of a grant may not exceed twenty thousand dollars twenty thousand dollars ($20,000).

(2) The applicant shall match the grant on a dollar-for-dollar basis.

(3) The grant may be used only for capital expenditures necessary to provide Public interest services and programming.

(4) An applicant may receive no more than one grant per fiscal year.

(c) Reports. – The e-NC Authority must publish an annual report on grants awarded under this section. The report must list each grant recipient, the amount of the grant, and the purpose of the grant.".

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 2047*

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

H2047-ARB-73 [v.1]

SIGNED Alice L Bordsen
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

ATTACHMENT 14

EDITION No. perfecting

H. B. No. Amendment 42047 DATE ARB-73 (v.1) Byrum

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) McComas
Sen.)

1 moves to amend the bill on page 1, line 10
2 ( ) WHICH CHANGES THE TITLE
3 by adding at the following sentence at the end of that
4 line to read:
5
6 "~~This~~ "The bandwidth set aside is required by this section
7 applies only to ~~cable cable~~ cable ~~s~~ ~~trans~~
8 digital transmissions and does not apply to
9 analog transmissions."
10
11
12
13
14
15
16
17
18
19

SIGNED Alice L Bordsen

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

ATTACHMENT 15

EDITION No. PCS-RBx-48

H. B. No. 2047 DATE June 6, 2006

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE RBx-48

(Rep.) Carney
Sen.)

1 moves to amend the bill on page 7, line 44
2 ( ) WHICH CHANGES THE TITLE
3 by substituting the phrase "twenty-five
4 thousand dollars ($25,000)" for the
5 phrase "twenty thousand dollars ($20,000)"
6
7
8
9
10
11
12
13
14
15
16
17
18
19

SIGNED Ruby Carney

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 2047*

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

H2047-ARB-63 [v.2]

Date June 6 ,2006

Comm. Sub. [NO]
Amends Title [NO]
H2047-CSRBx-48

Representative ROSS

moves to amend the bill on page 5, lines 3 and 4, by inserting between those lines the following:

"(b1) Additional Service Standards. – The following customer service protections shall be in effect where not exceeded by local government or Federal Communication Commission Customer Service Obligations for cable service providers. A local government may enforce the customer service standards set forth in this section against cable service providers.

(1) Service Center. – The cable service provider must locate at least one customer service center or business office (service center) in each municipality in the service area. The service center location, business hours and telephone, fax and e-mail contact information shall be printed prominently on all billing statements. A provider must maintain local voice and fax telephone numbers and a customer service e-mail address for service and repair requests and billing inquiries.

(2) Photo Identification Required. – All officers, agents, customer service representatives (CSR) and employees of the cable service provider, its contractors and subcontractors in personal contact with the customer shall have a visible identification card with their name and photograph and shall orally identify themselves upon first contact with the customer. For failure to comply, a $25.00 credit shall be awarded to the customer.

(3) Minimum Compensation to Customer for Noncompliance

a. Responsiveness – Cable service provider will guarantee seven day residential installation and service. A provider must provide

cable service to its customers within seven business days following order placement. If service is not installed within 7 business days, the cable operator will provide that customer free installation, or, if the installation fee has been waived for promotional reasons, then a one month service credit shall be awarded to the customer by the provider.

b. Underground Utility Drops – Underground cable drops shall be buried no less than six inches deep and work shall be completed in no more than two calendar weeks from the installation date provided to the customer. For failure to bury a cable drop, $100.00 shall be awarded to the customer by the Cable Service Provider.

c. Service Appointments. – Customers who have ordered cable service may choose any available two hour time block during regular business hours. For failure to comply, the cable service provider shall award a $25.00 credit to the customer.

1. The cable service provider may not cancel an appointment with a customer after 5:00 p.m. on the day before the scheduled appointment. For failure to comply, the provider must award a $25.00 credit to the customer.

2. If the cable service provider cannot keep an appointment for any reason, the provider must contact the customer prior to the end of the scheduled appointment and reschedule at the convenience of the customer. For failure to comply, the provider must award a $25.00 credit to the customer.

d. Cable Television Reception Difficulties and Service Problems

1. Distortion Free Cable Service. – Cable service provider must provide clear television reception. The value of one day's service for any portion of the day where picture quality fails to meet FCC standards or in the absence of FCC standards is considered unacceptable by the

Attorney General or local government, the provider must award a $25.00 credit to each customer in the effected area.

2. Prompt Repair. – If a customer experiences poor cable or audio reception due to a failure of the cable service provider's equipment, the provider must repair the problem no later than the next day, unless otherwise agreed to with the customer. Regardless, the value of one day's service for each day the problem remains uncorrected, shall be automatically awarded to each customer in the affected area by the provider.

e. Respectful Treatment of Property. – A cable service provider must replace any trees or shrubs damaged during any installation or repair. For failure to comply, the provider shall award the property owner a $25.00 credit plus reimbursement for the cost to restore the damaged area.

f. Property Restoration. – Cable service providers must restore any damaged property to the same condition it was before damage occurred. For failure to comply, the provider shall award to the property owner a $25.00 credit plus reimbursement for the cost to repair the damaged property.

(4) Customer Information. – Upon installation, or at a customer's request, a cable service provider must provide the following requested information and services:

a. Products and services offered.

b. Complete range of service options and prices.

c. Customer service standards.

d. Instruction on use of Cable Service and related terminal equipment, either company or subscriber owned.

e. Billing, collection and disconnect policies.

f. Customer privacy requirements.

g. Complaint procedure, containing the designated State agency to who the Complaints should be addressed.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 2047*

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

H2047-ARB-63 [v.2]

h. Use and availability of parental control/lock-out device.
i. Special services for customers with visual, hearing or mobility disabilities.
j. Days, times of operation, and locations of the service centers.
k. For each failure by a provider to provide a customer with the information in this subdivision, the provider shall award a $25.00 credit to the customer.

(5) Customer Privacy. – For any violation of privacy per Federal law or State Code by a cable service provider, the provider shall credit all affected customer accounts $150.00 per incident.

(6) Violation. – For any violation of the FCC's Customer Service Obligations or local government Customer Service Standards by the cable service provider, the provider shall award a $25.00 credit to the customer.

(7) Increase in Penalty Amount. – The award amounts in this subsection are subject to increases at the end of every five-year period as determined by the appropriate enforcement authority."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED ✓ TABLED _____

North Carolina General Assembly

House Committee on Finance

Minutes

~

June 8, 2006

The House Committee on Finance met on Thursday, June 8, 2006 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Alexander, Gibson, Howard, Luebke, McComas and Wainwright; Vice-Chairs Daughtridge, Hill, Ross, Weiss, and Womble; and Representatives B. Allen, Blackwood, Blust, Bordsen, Capps, Carney, Dockham, England, Faison, Fisher, Folwell, Glazier, Goforth, Harrell, Holliman, Insko, McGee, Rayfield, Underhill, Vinson, Walend, and Wiley. Also present were Sergeant-at-Arms Nell Casper, Marvin Lee, Frank Prevo, and Dusty Rhodes. Staff persons present included Rodney Bizzell, David Crotts, Canaan Huie, Linda Millsaps, Martha Walston, and Bob Weiss. The Agenda and Visitor Registration Sheet are attached and incorporated into these minutes as **attachments 1 and 2**.

Chairman Luebke called the meeting to order at 8:39 am and recognized the four (4) pages present: (1) Carlton Jones of Forsyth County, sponsored by Representative Womble; (2) Phyllis King of Halifax County, sponsored by Representative Jones; (3) Olivia Hyatt of Union County, sponsored by Representative Blackwood; and (4) John Taylor of Wake County, sponsored by Speaker Black.

Chairman Luebke then announced that **HB 918 – FILM INDUSTRY JOBS INCENTIVES** and **HB 2384 – CAP VARIABLE RATE OF THE GASOLINE EXCISE TAX** were both removed from the calendar.

The first bill under the Committee's consideration was **HB 2289 - ASHEVILLE FRANCHISE TAX AMENDMENT** (see **attachment 3**). Chairman Luebke first recognized Representative Sherrill, a primary sponsor on the bill, to explain the details of House Bill 2289. She explained that this bill amends the Asheville City Charter and allows the payment of the utility franchise taxes to be governed by an Amendment to Agreement from November of last year. Martha Walston of Fiscal Research was recognized and noted that this bill was given a favorable report in the House Local Government II Committee. Chairman Luebke then recognized Representative Fisher who moved that House Bill 2289 be given a favorable report by the Committee. Seeing no further discussion, Chairman Luebke called the motion to a vote and it carried by consent.

The following bill considered by the Committee was **HB 1993 – SUPPORT OUR TROOPS SPECIAL LICENSE PLATE** (see **attachment 4**). Chairman Luebke then recognized Representative Wainwright who moved for the adoption of the proposed committee substitute for the Committee's consideration. The motion was adopted. Representative Glazier was then recognized to explain the bill. He said that this bill was a compilation of eight special license plate

bills that conformed to the guidelines set forth in previous special license plate legislation. Chairman Luebke then recognized Representative Weiss who urged the Committee to support the bill. Rep. Pierce also expressed his support for the bill as it included a special license late for Prince Hall Masons. Representative Daughtridge was then recognized and asked if each special license plate was subject to the 300 minimum plate requirement. In response, Martha Walston from Fiscal Research stated that all of the special license plates in this bill were required to meet this minimum. Representative Wainwright then moved for a favorable report to the proposed committee substitute, unfavorable as to the original bill. As there was no further debate, Chairman Luebke called the motion to a vote and it carried without objection.

The final bill discussed by the Committee was **HB 2433 – FINANCE LAW CHANGES-1** (see **attachment 5**). As Chairman Luebke was the sponsor of the bill, Representative Alexander assumed the position as chairwoman of the Committee. Representative Wainwright was then recognized by Chairwoman Alexander and moved for the adoption of the proposed committee substitute for the Committee's consideration. The motion was adopted. Chairwoman Alexander then recognized Representative Luebke who explained that this bill amends and updates governmental department fees and establishes a new fee for the analysis of private well-water samples by the State Laboratory of Public Health. Martha Walston of Fiscal Research was then recognized to give a section by section summary of the fee changes provided in the bill. Chairwoman Alexander then recognized Representative Capps who inquired about the new fee being charged for the analysis of water samples. Chairwoman Alexander recognized Andrea Russo from Fiscal Research who explained that only new wells were required to undergo testing and not existing wells.

Representative Wainwright then asked if the local health departments and the State Laboratory of Public Health can charge fees. Andrea Russo of Fiscal Research was again recognized and stated that local health departments can already charge fees and the fee charged by the State Laboratory would allow them to cover expenses for the new tests and the extra positions required to complete the testing. Representative Wainwright then expressed his concerns about new fees adding a burden to people constructing new homes and the authority given to the Department of Health and Human Services to increase these fees without the prior approval of the General Assembly. Representative Wainwright then sent forth an amendment (see **attachment 6**) that capped the water sample analysis fee at $55 and required the Department of Health and Human Services to obtain approval from the General Assembly before the fee could rise above that level. Dr. Leah Devlin, the Acting Director of Public Health at the North Carolina Department of Health and Human Services, was recognized and explained that county commissioners would be assessing the fee coming from the local health departments. Currently, counties would be free to use other laboratories or to use the state health laboratory. Chairwoman Alexander then recognized Representative Howard who asked if all private water samples would have to be analyzed by the State Health lab. Andrea Russo of Fiscal Research stated that newly constructed wells would have to be analyzed by the state health lab effective July 1, 2007.

Representative Faison was then recognized and asked the bill sponsor, Representative Luebke, if he would mind waiting to consider the bill until the language of the bill could be clarified. Chairwoman Alexander then recognized Representative Luebke who responded that the bill needed to be passed out of the Committee before the budget bill is introduced next week. Representative Underhill then asked how many new wells are drilled in NC every year. Dr. Devlin from the Department of Health and Human Services was recognized and stated that approximately 25,000 new wells are drilled each year. Representative Faison was then recognized and asked about the language in Section 2.1(c). Andrea Russo of Fiscal Research then stated that this language authorizes the Department to create the new positions and then be reimbursed from future fee

receipts. Representative Wainwright was then recognized and moved that his amendment to cap the fee assessed by the State Labor at fifty-five dollars be adopted. Chairwoman Alexander called the Wainwright motion to a vote and the amendment was adopted. Representative Gibson was then recognized and commented that he supported the bill and the way it gives local governments the ability to raise funds to compensate for the rising cost of water testing.

Chairwoman Alexander then recognized Representative Goforth who said that some areas have planned to better keep up with the demand for well testing. Elizabeth Song from the Department of Environment and Natural Resources was then recognized and said that the only time consuming process is the actual water sampling and not the analysis. Representative Howard then sent forth an amendment (see **attachment 7**) and moved for its adoption. She explained that the amendment deletes lines 25-26 on page 5 of the bill, allowing the Department to adjust fees based on increases from inflation without prior approval from the General Assembly. As there was no further debate, Chairwoman Alexander called the motion to a vote and the Howard amendment was adopted. Representative Glazier was then recognized and stated that the discussion held by the Committee today points to the need for additional funding for a new state public health lab. Chairwoman Alexander next recognized Representative Lucas who asked if it was necessary for all new wells in a new neighborhood to be tested. Dr. Devlin from the Department of Health and Human Services then stated that well samples can vary from site to site and across different depths; therefore, each new well should be tested.

Citing Section 3.2 of the bill, Representative Howard then stated that the fees assessed to her county for water/sewer permits could be raised from $650 to $3,000 under this bill. She asked if this bill could be displaced until members had more time to review the bill. Rebecca Troutman from the North Carolina Association of County Commissioners was recognized and said that this is the first time she has seen these fee increases in the bill. Following her comments, Representative Howard was recognized and moved for adjournment. Chairwoman Alexander called the motion to a vote and, by a vote of 14 ayes to 13 nays, the motion carried.

Chairwoman Alexander then adjourned the meeting at 9:45 am.

Respectfully submitted,

Representative Paul Luebke
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:

1. Agenda
2. Visitor Registration Sheet
3. House Bill 2289 (and related materials)
4. House Bill 1993 (and related materials)
5. House Bill 2433 (and related materials)
6. Wainwright amendment on House Bill 2433 – **ADOPTED**
7. Howard amendment on House Bill 2433 - **ADOPTED**
8. House Bill 2384 (and related materials) – (REMOVED FROM CALENDAR)

North Carolina General Assembly

House Committee on Finance

Minutes

~

June 8, 2006

The House Committee on Finance met on Thursday, June 8, 2006 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Alexander, Gibson, Howard, Luebke, McComas and Wainwright; Vice-Chairs Daughtridge, Hill, Ross, Weiss, and Womble; and Representatives B. Allen, Blackwood, Blust, Bordsen, Capps, Carney, Dockham, England, Faison, Fisher, Folwell, Glazier, Goforth, Harrell, Holliman, Insko, McGee, Rayfield, Underhill, Vinson, Walend, and Wiley. Also present were Sergeant-at-Arms Nell Casper, Marvin Lee, Frank Prevo, and Dusty Rhodes. Staff persons present included Rodney Bizzell, David Crotts, Canaan Huie, Linda Millsaps, Martha Walston, and Bob Weiss. The Agenda and Visitor Registration Sheet are attached and incorporated into these minutes as **attachments 1 and 2.**

Chairman Luebke called the meeting to order at 8:39 am and recognized the four (4) pages present: (1) Carlton Jones of Forsyth County, sponsored by Representative Womble; (2) Phyllis King of Halifax County, sponsored by Representative Jones; (3) Olivia Hyatt of Union County, sponsored by Representative Blackwood; and (4) John Taylor of Wake County, sponsored by Speaker Black.

Chairman Luebke then announced that **HB 918 – FILM INDUSTRY JOBS INCENTIVES** and **HB 2384 – CAP VARIABLE RATE OF THE GASOLINE EXCISE TAX** were both removed from the calendar.

The first bill under the Committee's consideration was **HB 2289 - ASHEVILLE FRANCHISE TAX AMENDMENT** (see **attachment 3**). Chairman Luebke first recognized Representative Sherrill, a primary sponsor on the bill, to explain the details of House Bill 2289. She explained that this bill amends the Asheville City Charter and allows the payment of the utility franchise taxes to be governed by an Amendment to Agreement from November of last year. Martha Walston of Fiscal Research was recognized and noted that this bill was given a favorable report in the House Local Government II Committee. Chairman Luebke then recognized Representative Fisher who moved that House Bill 2289 be given a favorable report by the Committee. Seeing no further discussion, Chairman Luebke called the motion to a vote and it carried by consent.

The following bill considered by the Committee was **HB 1993 – SUPPORT OUR TROOPS SPECIAL LICENSE PLATE** (see **attachment 4**). Chairman Luebke then recognized Representative Wainwright who moved for the adoption of the proposed committee substitute for the Committee's consideration. The motion was adopted. Representative Glazier was then recognized to explain the bill. He said that this bill was a compilation of eight special license plate

bills that conformed to the guidelines set forth in previous special license plate legislation. Chairman Luebke then recognized Representative Weiss who urged the Committee to support the bill. Rep. Pierce also expressed his support for the bill as it included a special license late for Prince Hall Masons. Representative Daughtridge was then recognized and asked if each special license plate was subject to the 300 minimum plate requirement. In response, Martha Walston from Fiscal Research stated that all of the special license plates in this bill were required to meet this minimum. Representative Wainwright then moved for a favorable report to the proposed committee substitute, unfavorable as to the original bill. As there was no further debate, Chairman Luebke called the motion to a vote and it carried without objection.

The final bill discussed by the Committee was **HB 2433 – FINANCE LAW CHANGES-1** (see **attachment 5**). As Chairman Luebke was the sponsor of the bill, Representative Alexander assumed the position as chairwoman of the Committee. Representative Wainwright was then recognized by Chairwoman Alexander and moved for the adoption of the proposed committee substitute for the Committee's consideration. The motion was adopted. Chairwoman Alexander then recognized Representative Luebke who explained that this bill amends and updates governmental department fees and establishes a new fee for the analysis of private well-water samples by the State Laboratory of Public Health. Martha Walston of Fiscal Research was then recognized to give a section by section summary of the fee changes provided in the bill. Chairwoman Alexander then recognized Representative Capps who inquired about the new fee being charged for the analysis of water samples. Chairwoman Alexander recognized Andrea Russo from Fiscal Research who explained that only new wells were required to undergo testing and not existing wells.

Representative Wainwright then asked if the local health departments and the State Laboratory of Public Health can charge fees. Andrea Russo of Fiscal Research was again recognized and stated that local health departments can already charge fees and the fee charged by the State Laboratory would allow them to cover expenses for the new tests and the extra positions required to complete the testing. Representative Wainwright then expressed his concerns about new fees adding a burden to people constructing new homes and the authority given to the Department of Health and Human Services to increase these fees without the prior approval of the General Assembly. Representative Wainwright then sent forth an amendment (see **attachment 6**) that capped the water sample analysis fee at $55 and required the Department of Health and Human Services to obtain approval from the General Assembly before the fee could rise above that level. Dr. Leah Devlin, the Acting Director of Public Health at the North Carolina Department of Health and Human Services, was recognized and explained that county commissioners would be assessing the fee coming from the local health departments. Currently, counties would be free to use other laboratories or to use the state health laboratory. Chairwoman Alexander then recognized Representative Howard who asked if all private water samples would have to be analyzed by the State Health lab. Andrea Russo of Fiscal Research stated that newly constructed wells would have to be analyzed by the state health lab effective July 1, 2007.

Representative Faison was then recognized and asked the bill sponsor, Representative Luebke, if he would mind waiting to consider the bill until the language of the bill could be clarified. Chairwoman Alexander then recognized Representative Luebke who responded that the bill needed to be passed out of the Committee before the budget bill is introduced next week. Representative Underhill then asked how many new wells are drilled in NC every year. Dr. Devlin from the Department of Health and Human Services was recognized and stated that approximately 25,000 new wells are drilled each year. Representative Faison was then recognized and asked about the language in Section 2.1(c). Andrea Russo of Fiscal Research then stated that this language authorizes the Department to create the new positions and then be reimbursed from future fee

receipts. Representative Wainwright was then recognized and moved that his amendment to cap the fee assessed by the State Labor at fifty-five dollars be adopted. Chairwoman Alexander called the Wainwright motion to a vote and the amendment was adopted. Representative Gibson was then recognized and commented that he supported the bill and the way it gives local governments the ability to raise funds to compensate for the rising cost of water testing.

Chairwoman Alexander then recognized Representative Goforth who said that some areas have planned to better keep up with the demand for well testing. Elizabeth Song from the Department of Environment and Natural Resources was then recognized and said that the only time consuming process is the actual water sampling and not the analysis. Representative Howard then sent forth an amendment (see **attachment 7**) and moved for its adoption. She explained that the amendment deletes lines 25-26 on page 5 of the bill, allowing the Department to adjust fees based on increases from inflation without prior approval from the General Assembly. As there was no further debate, Chairwoman Alexander called the motion to a vote and the Howard amendment was adopted. Representative Glazier was then recognized and stated that the discussion held by the Committee today points to the need for additional funding for a new state public health lab. Chairwoman Alexander next recognized Representative Lucas who asked if it was necessary for all new wells in a new neighborhood to be tested. Dr. Devlin from the Department of Health and Human Services then stated that well samples can vary from site to site and across different depths; therefore, each new well should be tested.

Citing Section 3.2 of the bill, Representative Howard then stated that the fees assessed to her county for water/sewer permits could be raised from $650 to $3,000 under this bill. She asked if this bill could be displaced until members had more time to review the bill. Rebecca Troutman from the North Carolina Association of County Commissioners was recognized and said that this is the first time she has seen these fee increases in the bill. Following her comments, Representative Howard was recognized and moved for adjournment. Chairwoman Alexander called the motion to a vote and, by a vote of 14 ayes to 13 nays, the motion carried.

Chairwoman Alexander then adjourned the meeting at 9:45 am.

Respectfully submitted,

Representative Paul Luebke
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:

1. Agenda
2. Visitor Registration Sheet
3. House Bill 2289 (and related materials)
4. House Bill 1993 (and related materials)
5. House Bill 2433 (and related materials)
6. Wainwright amendment on House Bill 2433 – **ADOPTED**
7. Howard amendment on House Bill 2433 - **ADOPTED**
8. House Bill 2384 (and related materials) – (REMOVED FROM CALENDAR)

AGENDA
House Finance Committee

ATTACHMENT 1

Tuesday, June 8, 2006
8:30 a.m.
Room 544 LOB
Chaired by: Rep. Luebke

Co-Chairs

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

Call to Order

Introduction of Pages

Bills:

HB 918 **FILM INDUSTRY JOBS INCENTIVES** *Reps. McComas & Harrell*

HB 1993 **SUPPORT OUR TROOPS SPECIAL LICENSE PLATE**
Reps. Glazier, Dickson, Grady, & Pate

HB 2289 **ASHEVILLE FRANCHISE TAX AMENDMENT**
Reps. Sherrill, Goforth, & Fisher

HB 2384 **CAP VARIABLE RATE OF THE GASOLINE EXCISE TAX**
Reps. Gibson, Coates, Underhill, & Goforth

HB 2433 **FINANCE LAW CHANGES – 1** *Rep. Luebke*

Adjournment

ATTACHMENT 2

VISITOR REGISTRATION SHEET

Finance — 6-8-06

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
BILL ARNOLD	N.C. FILM OFFICE
DAVID BARNES	Poyner + Spruill
Ken Melton	N.C. DOR
Anna Mitchell	NC DOR
Andy Sasol	NCDOR
Leah Devlin	
Deborah Barnes	NCAHHD / NCPHA
John Long	Martin Marietta
Lisa Martin	NC Home Builders
DAVID BARNES	Poyner + Spruill
Lee Hodges	KCLH
Elizabeth Song	DENR
DONNA ALDERMAN	NCDOR

VISITOR REGISTRATION SHEET

Finance — 6-8-06

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Robert Ott, Jr.	City of Asheville P.O Box 7148 Asheville 28802
LARRY McDEVITT	THE VAN WINKLE LAW FIRM 11 N. MARKET ST. ASHEVILLE NC 28801
William Fisher	The Van Winkle Law Firm
Cody Rifkin	Van Winkle firm
Hemuel Hinton	NCUC Staff
Kathy Hawkins	Program Analyst
Cam Cner	BPMHL
Greg Ralford	NCDOR
Sam McEwen	NCDOR
Stephanie Dorko	Charlotte Chamber
BERRY JENKINS	CAROLINAS AGC
MARK FOSTER	NCDOT
Jeff Wolfe	Daily Bulletin

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 8, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Cody Rifkin	Jan Winkle firm
R. Paul Wilms	NCHBA
Michelle Judkins	intern
Sandy Sands	WCSR
Johanna Reese	DOT
Ryan Pruden	Rep. Glazier
Karl Knapp	DOR
Sharon Miller	CUCA
PERRI MORGAN	NC100
Jami Fitzgerald	NCFPC

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 8, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Angie Harris	Maupin Taylor
Adam Prudence	NCASA
Bob Allen	Allen Assoc

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	RAM - 305 M
WRand	Senate staff
Leanne Winn	NCSBA

CORRECTED NOTICE:
HB 2289 – ADDED

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

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

DAY & DATE: **Thursday, June 8, 2006**

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

LOCATION: **Room 544, LOB**

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

HB 918 – FILM INDUSTRY JOBS INCENTIVES – Reps. McComas & Harrell

HB 1993 – SUPPORT OUR TROOPS SPECIAL LICENSE PLATE – Reps. Glazier, Dickson, Grady, & Pate

HB 2289 - ASHEVILLE FRANCHISE TAX AMENDMENT – Reps. Sherrill, Goforth, & Fisher

HB 2384 – CAP VARIABLE RATE OF THE GASOLINE EXCISE TAX – Reps. Gibson, Coates, Underhill, & Goforth

HB 2433 – FINANCE LAW CHANGES – 1 – Rep. Luebke

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

I hereby certify this notice was filed by the committee clerk at the following offices at **2:15 pm** on **June 7, 2006**:

X Principal Clerk
X Reading Clerk - House Chamber

Jason A. Cannon (Committee Clerk)

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

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

DAY & DATE: **Thursday, June 8, 2006**

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

LOCATION: **Room 544, LOB**

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

HB 918 – FILM INDUSTRY JOBS INCENTIVES – Reps. McComas & Harrell

HB 1993 – SUPPORT OUR TROOPS SPECIAL LICENSE PLATE – Reps. Glazier, Dickson, Grady, & Pate

HB 2384 – CAP VARIABLE RATE OF THE GASOLINE EXCISE TAX – Reps. Gibson, Coates, Underhill, & Goforth

HB 2433 – FINANCE LAW CHANGES – 1 – Rep. Luebke

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

I hereby certify this notice was filed by the committee clerk at the following offices at **11:15 am** on **June 7, 2006**:

X Principal Clerk
X Reading Clerk - House Chamber

Jason A. Cannon (Committee Clerk)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 2289*

Short Title:	Asheville Franchise Tax Amendment.	(Local)
Sponsors:	Representatives Sherrill, Goforth, and Fisher (Primary Sponsors).	
Referred to:	Local Government II, if favorable, Finance.	

May 22, 2006

A BILL TO BE ENTITLED

AN ACT AMENDING THE CHARTER OF THE CITY OF ASHEVILLE RELATING TO AN AGREEMENT MAKING A FULL AND FINAL SETTLEMENT OF DISPUTED MATTERS RELATING TO THE AMOUNT OF FRANCHISE TAX DUE THE CITY BY TWO PUBLIC UTILITIES.

The General Assembly of North Carolina enacts:

SECTION 1. The language added to Section 389 of Chapter 16 of the Private Laws of 1923 by Chapter 652 of the 1993 Session Laws reads as rewritten:

"; provided, however, the imposition and payment of taxes, authorized by this section, on and by Carolina Power & Light Company and Public Service Company of North Carolina, Inc., their successors or assigns, shall be governed by that Agreement dated the 24th day of May 1994, by and among the City of Asheville, Carolina Power & Light Company, and Public Service Company of North Carolina, Inc., which Agreement was approved and authorized to be executed by the Asheville City Council by its Resolution Number 94-96, and which Agreement is spread upon the official minutes of the City Council of the same ~~date.~~ date; provided that said Agreement has been amended by Amendment to Agreement dated the 22nd day of November 2005 by and among the City of Asheville and Carolina Power & Light Company, with the consent of Public Service Company of North Carolina, Inc., which Amendment was approved and authorized to be executed by the Asheville City Council by its Resolution Number 05-218, and which Amendment is spread upon the official minutes of the City Council of the same date."

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

HOUSE BILL 2289:
Asheville Franchise Tax Amendment

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 7, 2006
Introduced by:	Reps. Sherrill, Goforth, Fisher	**Summary by:**	Martha Walston
Version:	First Edition		Committee Counsel

SUMMARY: HB 2289 amends the Asheville City Charter regarding the utility franchise taxes paid by Progress Energy (formerly Carolina Power & Light, aka CP&L) to the City. The amendment provides that the payment of taxes shall be governed by an Amendment to Agreement dated November 22, 2005. The bill has been given a favorable report in House Local Government II. SB 1835 is a companion bill.

The act would become effective when it becomes law.

CURRENT LAW: In the 1940s, the General Assembly adopted a uniform method for assessing utility franchise taxes on certain regulated utilities as well the distribution of those revenues to North Carolina municipalities. Prior to that time, utility franchise taxes varied from city to city, and each municipality had its own utility franchise tax. However, the local taxes were not entirely pre-empted by the State law because it allowed a local tax provided it did not exceed the tax imposed as of January 1, 1947.

During the 1980s and the 1990s, the amount of the utility franchise tax paid to Asheville by CP&L and Public Service Gas Company came into dispute. In 1994, the parties resolved the matter through an agreement ("1994 Agreement") that provided for a fixed payment by CP&L to the City. Because the 1994 Agreement had the effect of modifying the authority of the City to impose a franchise tax amount that differed from the amount imposed by it in 1947, and because the amount that was charged in 1947 was governed by the City Charter, the 1994 Agreement had to be added (by reference) to the City Charter. This was accomplished by Chapter 652 of the 1993 Session Laws.

During the same general period of time (1989 and 2000), the City attempted to annex an unincorporated area on the south side of town which included the Lake Julian Power Plant. On both occasions the courts invalidated the attempted annexations. Concurrent with the attempted annexations, the City and CP&L began negotiations about the Lake Julian Power Plant. The City and CP&L have come to an agreement that resolves the issues under litigation by foreclosing the possibility of future annexation attempts and the City will realize some revenue, based upon the value of the Power Plant.

BILL ANALYSIS: House Bill H2289 would further amend the Asheville City Charter to incorporate an Amendment to the 1994 Agreement (2005 Amendment). The amendment to the Charter is necessary because the 2005 Amendment changes the 1994 Agreement and also affects the City's powers regarding annexation. Under the terms and conditions of the 2005 Amendment, the modification to the City Charter must occur by November 1, 2008, for the Amendment to be effective.

The information contained in this summary is based upon the Staff Report dated 11/22/05 by Mr. Robert W. Oast, Jr., City Attorney to the Asheville Mayor and City Council.

Kory Goldsmith, counsel to House Local Government II, substantially contributed to this summary.

H2289e1-SMLA

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☐ Committee Substitute for

HB 2289 A BILL TO BE ENTITLED AN ACT AMENDING THE CHARTER OF THE CITY OF ASHEVILLE RELATING TO AN AGREEMENT MAKING A FULL AND FINAL SETTLEMENT OF DISPUTED MATTERS RELATING TO THE AMOUNT OF FRANCHISE TAX DUE THE CITY BY TWO PUBLIC UTILITIES.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H **D**

HOUSE BILL 1993
PROPOSED COMMITTEE SUBSTITUTE H1993-CSRBf-53 [v.1]

6/7/2006 9:11:38 PM

Short Title: Various Special License Plates. (Public)

Sponsors:

Referred to:

May 16, 2006

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE THE FOLLOWING SPECIAL REGISTRATION PLATES: CAROLINA'S AVIATION MUSEUM, EMT, FOX HUNTING, LEUKEMIA AND LYMPHOMA SOCIETY, LUNG CANCER RESEARCH, N.C. CHILDREN'S PROMISE, PRINCE HALL MASONS, SUPPORT OUR TROOPS, AND U.S. EQUINE RESCUE LEAGUE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-63(b) reads as rewritten:

"(b) Every license plate shall have displayed upon it the registration number assigned to the vehicle for which it is issued, the name of the State of North Carolina, which may be abbreviated, and the year number for which it is issued or the date of expiration. A plate issued for a commercial vehicle, as defined in G.S. 20-4.2(1), and weighing 26,001 pounds or more, must bear the word "commercial," unless the plate is a special registration plate authorized in G.S. 20-79.4 or the commercial vehicle is a trailer or is licensed for 6,000 pounds or less. The plate issued for vehicles licensed for 7,000 pounds through 26,000 pounds must bear the word "weighted".

Except as otherwise provided in this subsection, a registration plate issued by the Division for a private passenger vehicle or for a private hauler vehicle licensed for 6,000 pounds or less shall be a "First in Flight" plate. A "First in Flight" plate shall have the words "First in Flight" printed at the top of the plate above all other letters and numerals. The background of the plate shall depict the Wright Brothers biplane flying over Kitty Hawk Beach, with the plane flying slightly upward and to the right. The following special registration plates do not have to be a "First in Flight" plate. The design of the plates that are not "First in Flight" plates must be approved by the Division and the State Highway Patrol for clarity and ease of identification.

(1) Friends of the Great Smoky Mountains National Park.
(2) Rocky Mountain Elk Foundation.
(3) Blue Ridge Parkway Foundation.

(4) Friends of the Appalachian Trail.
(5) NC Coastal Federation.
(6) In God We Trust.
(7) Stock Car Racing Theme.
(8) Buddy Pelletier Surfing Foundation.
(9) Guilford Battleground Company.
(10) National Wild Turkey Federation.
(11) North Carolina Aquarium Society.
(12) First in Forestry.
(13) North Carolina Wildlife Habitat Foundation.
(14) NC Trout Unlimited.
(15) Lung Cancer Research.
(16) Support Our Troops.
(17) US Equine Rescue League."

SECTION 2. G.S. 20-79.4(b)(22a) is recodified as G.S. 20-79.4(b)(22f); G.S. 20-79.4(b)(45a) is recodified as G.S. 20-79.4(b)(45b); and G.S. 20-79.4(b)(46a) is recodified as 20-79.4(b)(46f).

SECTION 3. G.S. 20-79.4(b) reads as rewritten:

"(b) Types. – The Division shall issue the following types of special registration plates:

...

(3n) Carolina's Aviation Museum. – This plate is issuable to the registered owner of a motor vehicle. The plate shall bear the phrase "Carolina's Aviation Museum" and a logo provided by the museum.

...

(14e) Emergency Medical Technician. – Issuable to an emergency medical technician, as defined in G.S. 131E-155. The plate shall bear the Star of Life logo and the letters "EMT." The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

...

(15c) Fox Hunting. – Issuable to the registered owner of a motor vehicle. The plate shall bear the phrase 'Fox Hunting' and a picture of a foxhound on the left side and a picture of a fox on the right side. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

...

(22c) Leukemia & Lymphoma Society. – Issuable to the registered owner of a motor vehicle. The plate shall bear the phrase and logo provided by The Leukemia & Lymphoma Society that reflects "TEAM IN TRAINING".

...

(22k) Lung Cancer Research. – Issuable to the registered owner of a motor vehicle. The plate shall bear the phrase "Lung Cancer Research" and a representation of the American Lung Association's Red Cross.

...

(28k) NC Children's Promise. – Issuable to the registered owner of a motor vehicle. The plate shall bear the phrase "N.C. Children's Promise" and a logo representing the N.C. Children's Promise organization.

...

(32g) Prince Hall Mason. – This plate is issuable to the registered owner of a motor vehicle. The plate shall bear the phrase "Prince Hall Mason" and a picture of the Masonic symbol.

...

(45a) Support Our Troops. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear a picture of a soldier and a child and shall bear the words: "Support Our Troops".

...

(46c) US Equine Rescue League. – Issuable to the registered owner of a motor vehicle. The plate shall bear the phrase "United States Equine Rescue League," and a depiction of two horses in a circle. "

SECTION 4. G.S. 20-79.7(a) reads as rewritten:

"(a) Fees. – Upon request, the Division shall provide and issue free of charge one registration plate to a recipient of the Congressional Medal of Honor, a 100% disabled veteran, and an ex-prisoner of war. All other special registration plates, including additional Congressional Medal of Honor, 100% Disabled Veteran, and Ex-Prisoner of War plates, are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

Special Plate	Additional Fee Amount
Coastal Conservation Association	$30.00
Crystal Coast	$30.00
El Pueblo	$30.00
First in Forestry	$30.00
Historical Attraction	$30.00
HOMES4NC	$30.00
In God We Trust	$30.00
North Carolina 4-H Development Fund	$30.00
North Carolina Libraries	$30.00
Personalized	$30.00
Share the Road	$30.00
State Attraction	$30.00
Stock Car Racing Theme	$30.00
Support Our Troops	$30.00
Buffalo Soldiers	$25.00
Collegiate Insignia	$25.00

Goodness Grows	$25.00
High School Insignia	$25.00
Kids First	$25.00
Olympic Games	$25.00
National Multiple Sclerosis Society	$25.00
National Wild Turkey Federation	$25.00
NC Agribusiness	$25.00
NC Children's Promise	$25.00
NC Coastal Federation	$25.00
Nurses	$25.00
(Effective until June 30, 2006) Rocky Mountain Elk Foundation	$25.00
Special Olympics	$25.00
Surveyor Plate	$25.00
The V Foundation for Cancer Research Division	$25.00
University Health Systems of Eastern Carolina	$25.00
Alpha Phi Alpha Fraternity	$20.00
Animal Lovers	$20.00
ARC of North Carolina	$20.00
Audubon North Carolina	$20.00
Autism Society of North Carolina	$20.00
Be Active NC	$20.00
Buddy Pelletier Surfing Foundation	$20.00
Daughters of the American Revolution	$20.00
Ducks Unlimited	$20.00
Guilford Battleground Company	$20.00
(Effective until June 30, 2006) Harley Owners' Group	$20.00
Litter Prevention	$20.00
March of Dimes	$20.00
NC Trout Unlimited	$20.00
NC Wildlife Habitat Foundation	$20.00
Omega Psi Phi Fraternity	$20.00
Prince Hall Mason	$20.00
Save the Sea Turtles	$20.00
Scenic Rivers	$20.00
School Technology	$20.00
SCUBA	$20.00
Soil and Water Conservation	$20.00
Special Forces Association	$20.00
Support Public Schools	$20.00
U.S. Equine Rescue League	$20.00
Wildlife Resources	$20.00
Zeta Phi Beta Sorority	$20.00
Carolina's Aviation Museum	$15.00
Leukemia & Lymphoma Society	$15.00

Lung Cancer Research	$15.00
Shag Dancing	$15.00
Active Member of the National Guard	None
100% Disabled Veteran	None
Ex-Prisoner of War	None
Legion of Valor	None
Purple Heart Recipient	None
Silver Star Recipient	None
All Other Special Plates	$10.00."

SECTION 5. G.S. 20-79.7(b) reads as rewritten:

"(b) Distribution of Fees. – The Special Registration Plate Account and the Collegiate and Cultural Attraction Plate Account are established within the Highway Fund. The Division must credit the additional fee imposed for the special registration plates listed in subsection (a) among the Special Registration Plate Account (SRPA), the Collegiate and Cultural Attraction Plate Account (CCAPA), the Natural Heritage Trust Fund (NHTF), which is established under G.S. 113-77.7, and the Parks and Recreation Trust Fund, which is established under G.S. 113-44.15, as follows:

Special Plate	SRPA	CCAPA	NHTF	PRTF
Alpha Phi Alpha Fraternity	$10	$10	0	0
Animal Lovers	$10	$10	0	0
ARC of North Carolina	$10	$10	0	0
Audubon North Carolina	$10	$10	0	0
Autism Society of North Carolina	$10	$10	0	0
Be Active NC	$10	$10	0	0
Buddy Pelletier Surfing Foundation	$10	$10	0	0
Buffalo Soldiers	$10	$15	0	0
Carolina's Aviation Museum	$10	$5	0	0
Coastal Conservation Association	$10	$20	0	0
Crystal Coast	$10	$20	0	0
Daughters of the American Revolution	$10	$10	0	0
Ducks Unlimited	$10	$10	0	0
El Pueblo	$10	$20	0	0
First in Forestry	$10	$10	$10	0
Goodness Grows	$10	$15	0	0
Guilford Battleground Company	$10	$10	0	0
(Effective until June 30, 2006)				
Harley Owners' Group	$10	$10	0	0
High School Insignia	$10	$15	0	0
Historical Attraction	$10	$20	0	0
HOMES4NC	$10	$20	0	0
In God We Trust	$10	$20	0	0
In-State Collegiate Insignia	$10	$15	0	0

Kids First	$10	$15	0	0
Leukemia and Lymphoma Society	$10	$5	0	0
Litter Prevention	$10	$10	0	0
Lung Cancer Research	$10	$5	0	0
March of Dimes	$10	$10	0	0
National Multiple Sclerosis Society	$10	$15	0	0
National Wild Turkey Federation	$10	$15	0	0
NC Agribusiness	$10	$15	0	0
NC Children's Promise	$10	$15	0	0
NC Coastal Federation	$10	$15	0	0
NC 4-H Development Fund	$10	$20	0	0
NC Trout Unlimited	$10	$10	0	0
North Carolina Libraries	$10	$20	0	0
NC Wildlife Habitat Foundation	$10	$10	0	0
Nurses	$10	$15	0	0
Olympic Games	$10	$15	0	0
Omega Psi Phi Fraternity	$10	$10	0	0
Out-of-state Collegiate Insignia	$10	0	$15	0
Personalized	$10	0	$15	$5
Prince Hall Mason	$10	$10	0	0
(Effective until June 30, 2006)				
Rocky Mountain Elk Foundation	$10	$15	0	0
Save the Sea Turtles	$10	$10	0	0
Scenic Rivers	$10	$10	0	0
School Technology	$10	$10	0	0
SCUBA	$10	$10	0	0
Shag Dancing	$10	$5	0	0
Share the Road	$10	$20	0	0
Soil and Water Conservation	$10	$10	0	0
Special Forces Association	$10	$10	0	0
Special Olympics	$10	$15	0	0
State Attraction	$10	$20	0	0
Stock Car Racing Theme	$10	$20	0	0
Support Our Troops	$10	$20	0	0
Support Public Schools	$10	$10	0	0
Surveyor Plate	$10	$15	0	0
The V Foundation for Cancer Research	$10	$15	0	0
University Health Systems of Eastern Carolina	$10	$15	0	0
US Equine Rescue League	$10	$10	0	0
Wildlife Resources	$10	$10	0	0

Zeta Phi Beta Sorority	$10	$10	0	0
All other Special Plates	$10	0	0	0."

SECTION 6. G.S. 20-81.12 is amended by adding the following new subsections to read:

"(b53) Carolina's Aviation Museum. – The Division must receive 300 or more applications for a Carolina's Aviation Museum plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Carolina's Aviation Museum plates to the Carolinas Historic Aviation Commission, a domestic nonprofit corporation, to be used to help continue operation of the Museum.

(b54) Leukemia & Lymphoma Society. – The Division must receive 300 or more applications for a Leukemia & Lymphoma Society plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Leukemia & Lymphoma Society plates to the Eastern Chapter of the North Carolina Leukemia & Lymphoma Society, a State-chartered chapter of the national nonprofit organization known as The Leukemia & Lymphoma Society, Inc., a duly registered New York nonprofit corporation. These funds may be divided between the Eastern and Western chapters of the North Carolina Leukemia & Lymphoma Society which shall each use the funds for blood cancer research, awareness, and education.

(b55) Lung Cancer Research. – The Division must receive 300 or more applications for the Lung Cancer Research plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Lung Cancer Research plates to the American Lung Association of North Carolina, Inc., to be used for eliminating lung disease and fostering healthy breathing for all people through prevention, outreach, education, research, and advocacy.

(b56) N.C. Children's Promise. – The Division must receive 300 or more applications for a N.C. Children's Promise plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of NC Children's Promise plates to The Medical Foundation of North Carolina, Incorporated, to be used to support the N.C. Children's Promise.

(b57) Prince Hall Mason. – The Division must receive 300 or more applications for a Prince Hall Mason plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Prince Hall Mason plates to The Most Worshipful Prince Hall Grand Lodge of Free and Accepted Masons of North Carolina and Jurisdiction, Inc., to be used for scholarships, family assistance, and other charitable causes.

(b58) Support Our Troops. – The Division must receive 300 or more applications for a Support Our Troops plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Support Our Troops plates to NC Support Our Troops, Inc., to be used to provide support and assistance to the troops and their families.

(b59) U.S. Equine Rescue League. – The Division must receive 300 or more applications for the U.S. Equine Rescue League plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of U.S. Equine Rescue League plates to the United States Equine Rescue League, Inc., to be used for the care and upkeep of rescued equines."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 1993

Short Title:	Support Our Troops Special License Plate.	(Public)
Sponsors:	Representatives Glazier, Dickson, Grady, Pate (Primary Sponsors); Blackwood, Cleveland, Current, Faison, Harrison, McGee, Pierce, Preston, Rapp, Setzer, Spear, Steen, Underhill, Vinson, Wainwright, and Weiss.	
Referred to:	Finance.	

May 16, 2006

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE A SUPPORT OUR TROOPS SPECIAL REGISTRATION PLATE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-79.4(b)(45a) is recodified as G.S. 20-79.4(b)(45b).

SECTION 2. G.S. 20-79.4(b) reads as rewritten:

"(b) Types. – The Division shall issue the following types of special registration plates:

...

(45a) Support Our Troops. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear a picture of a soldier and a child and shall bear the words: "Support Our Troops"."

SECTION 3. G.S. 20-79.7(a) reads as rewritten:

"(a) Fees. – Upon request, the Division shall provide and issue free of charge one registration plate to a recipient of the Congressional Medal of Honor, a 100% disabled veteran, and an ex-prisoner of war. All other special registration plates, including additional Congressional Medal of Honor, 100% Disabled Veteran, and Ex-Prisoner of War plates, are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

Special Plate	Additional Fee Amount
Coastal Conservation Association	$30.00
Crystal Coast	$30.00
El Pueblo	$30.00
First in Forestry	$30.00
Historical Attraction	$30.00
HOMES4NC	$30.00

1	In God We Trust	$30.00
2	North Carolina 4-H Development Fund	$30.00
3	North Carolina Libraries	$30.00
4	Personalized	$30.00
5	Share the Road	$30.00
6	State Attraction	$30.00
7	Stock Car Racing Theme	$30.00
8	Support Our Troops	$30.00
9	Buffalo Soldiers	$25.00
10	Collegiate Insignia	$25.00
11	Goodness Grows	$25.00
12	High School Insignia	$25.00
13	Kids First	$25.00
14	Olympic Games	$25.00
15	National Multiple Sclerosis Society	$25.00
16	National Wild Turkey Federation	$25.00
17	NC Agribusiness	$25.00
18	NC Coastal Federation	$25.00
19	Nurses	$25.00
20	**(Effective until June 30, 2006)** Rocky Mountain Elk Foundation	$25.00
21	Special Olympics	$25.00
22	Surveyor Plate	$25.00
23	The V Foundation for Cancer Research Division	$25.00
24	University Health Systems of Eastern Carolina	$25.00
25	Alpha Phi Alpha Fraternity	$20.00
26	Animal Lovers	$20.00
27	ARC of North Carolina	$20.00
28	Audubon North Carolina	$20.00
29	Autism Society of North Carolina	$20.00
30	Be Active NC	$20.00
31	Buddy Pelletier Surfing Foundation	$20.00
32	Daughters of the American Revolution	$20.00
33	Ducks Unlimited	$20.00
34	Guilford Battleground Company	$20.00
35	**(Effective until June 30, 2006)** Harley Owners' Group	$20.00
36	Litter Prevention	$20.00
37	March of Dimes	$20.00
38	NC Trout Unlimited	$20.00
39	NC Wildlife Habitat Foundation	$20.00
40	Omega Psi Phi Fraternity	$20.00
41	Save the Sea Turtles	$20.00
42	Scenic Rivers	$20.00
43	School Technology	$20.00
44	SCUBA	$20.00

Soil and Water Conservation	$20.00
Special Forces Association	$20.00
Support Public Schools	$20.00
Wildlife Resources	$20.00
Zeta Phi Beta Sorority	$20.00
Shag Dancing	$15.00
Active Member of the National Guard	None
100% Disabled Veteran	None
Ex-Prisoner of War	None
Legion of Valor	None
Purple Heart Recipient	None
Silver Star Recipient	None
All Other Special Plates	$10.00."

SECTION 4. G.S. 20-79.7(b) reads as rewritten:

"(b) Distribution of Fees. – The Special Registration Plate Account and the Collegiate and Cultural Attraction Plate Account are established within the Highway Fund. The Division must credit the additional fee imposed for the special registration plates listed in subsection (a) among the Special Registration Plate Account (SRPA), the Collegiate and Cultural Attraction Plate Account (CCAPA), the Natural Heritage Trust Fund (NHTF), which is established under G.S. 113-77.7, and the Parks and Recreation Trust Fund, which is established under G.S. 113-44.15, as follows:

Special Plate	SRPA	CCAPA	NHTF	PRTF
Alpha Phi Alpha Fraternity	$10	$10	0	0
Animal Lovers	$10	$10	0	0
ARC of North Carolina	$10	$10	0	0
Audubon North Carolina	$10	$10	0	0
Autism Society of North Carolina	$10	$10	0	0
Be Active NC	$10	$10	0	0
Buddy Pelletier Surfing Foundation	$10	$10	0	0
Buffalo Soldiers	$10	$15	0	0
Coastal Conservation Association	$10	$20	0	0
Crystal Coast	$10	$20	0	0
Daughters of the American Revolution	$10	$10	0	0
Ducks Unlimited	$10	$10	0	0
El Pueblo	$10	$20	0	0
First in Forestry	$10	$10	$10	0
Goodness Grows	$10	$15	0	0
Guilford Battleground Company	$10	$10	0	0
(Effective until June 30, 2006)				
Harley Owners' Group	$10	$10	0	0
High School Insignia	$10	$15	0	0
Historical Attraction	$10	$20	0	0

HOMES4NC	$10	$20	0	0
In God We Trust	$10	$20	0	0
In-State Collegiate Insignia	$10	$15	0	0
Kids First	$10	$15	0	0
Litter Prevention	$10	$10	0	0
March of Dimes	$10	$10	0	0
National Multiple Sclerosis Society	$10	$15	0	0
National Wild Turkey Federation	$10	$15	0	0
NC Agribusiness	$10	$15	0	0
NC Coastal Federation	$10	$15	0	0
NC 4-H Development Fund	$10	$20	0	0
NC Trout Unlimited	$10	$10	0	0
North Carolina Libraries	$10	$20	0	0
NC Wildlife Habitat Foundation	$10	$10	0	0
Nurses	$10	$15	0	0
Olympic Games	$10	$15	0	0
Omega Psi Phi Fraternity	$10	$10	0	0
Out-of-state Collegiate Insignia	$10	0	$15	0
Personalized	$10	0	$15	$5
(Effective until June 30, 2006)				
Rocky Mountain Elk Foundation	$10	$15	0	0
Save the Sea Turtles	$10	$10	0	0
Scenic Rivers	$10	$10	0	0
School Technology	$10	$10	0	0
SCUBA	$10	$10	0	0
Shag Dancing	$10	$5	0	0
Share the Road	$10	$20	0	0
Soil and Water Conservation	$10	$10	0	0
Special Forces Association	$10	$10	0	0
Special Olympics	$10	$15	0	0
State Attraction	$10	$20	0	0
Stock Car Racing Theme	$10	$20	0	0
Support Our Troops	$10	$20	0	0
Support Public Schools	$10	$10	0	0
Surveyor Plate	$10	$15	0	0
The V Foundation for Cancer Research	$10	$15	0	0
University Health Systems of Eastern Carolina	$10	$15	0	0
Wildlife Resources	$10	$10	0	0
Zeta Phi Beta Sorority	$10	$10	0	0
All other Special Plates	$10	0	0	0."

SECTION 5. G.S. 20-81.12 is amended by adding a new subsection to read:

"(b53) Support Our Troops. – The Division must receive 300 or more applications for a Support Our Troops plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Support Our Troops plates to NC Support Our Troops, Inc., to be used to provide support and assistance to the troops and their families."

SECTION 6. This act is effective when it becomes law.

HOUSE BILL 1993:
Various Special License Plates

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 7, 2006
Introduced by:	Reps. Glazier, Dickson, Grady, Pate	**Summary by:**	Cindy Avrette
Version:	PCS to First Edition H1993-CSRB		Committee Counsel

SUMMARY: House Bill 1993 authorizes the Division of Motor Vehicles to develop eight new special registration plates. The bill becomes effective when it becomes law.

CURRENT LAW: The Division of Motor Vehicles is authorized to issue more than 100 special license plates. As a general rule, the fee for a special registration plate is the regular vehicle registration fee plus a $10 special registration plate fee.[1] The $10 special registration plate fee is credited to the Special Registration Plate Account. After deducting the cost of the plates from this account, $1,000,000 is annually appropriated to provide operating assistance for ten Visitor Centers.[2] The Centers are located in Brunswick, Camden, Carteret, Caswell, Columbus, Macon, McDowell, Transylvania, Tyrell, and Watauga Counties.[3] The remaining revenue in the account is transferred quarterly to the Department of Commerce for advertising (33%), the Department of Transportation for highway beautification (50%), and the Department of Human Resources to promote travel accessibility for disabled persons (17%).

The cost of some special plates includes a fee in addition to the $10 special registration plate fee. In those instances, the first $10 goes to the special registration plate fund and the remainder is transferred quarterly to designated beneficiaries of the additional fee amount.

BILL ANALYSIS: House Bill 1993 authorizes the Division of Motor Vehicles to issue eight new special registration plates. All of the plates authorized must meet the 300 minimum plate requirement[4] and all of the plates authorized require the $10 special registration plate fee that is credited to the Special Registration Plate Account. The bill provides that the following new plates would not have to be a 'First in Flight' plate[5]:

- Lung Cancer Research
- Support Our Troops
- US Equine Rescue League

The following chart details the plates authorized by this bill, the cost of each plate, and how the additional revenues derived from the plates, if any, will be distributed and used.

---

[1] One registration plate is issued free of charge to a recipient of the Congressional Medal of Honor, a 100% Disabled Veteran, or an ex-prisoner of war. Four special registration plates are exempt from the $10 special plate fee: active member of the National Guard, Legion of Valor, Purple Heart Recipient, and the Silver Star Recipient.

[2] There are 12 Visitors' Centers. The two centers that do not receive State funding are located in Dare County.

[3] Each Visitor's Center receives $100,000.

[4] There are 96 organizations trying to obtain the 300 minimum plate applications. Some of the organizations have been trying to meet this minimum number since 1992.

[5] The design of plates that are not 'First in Flight' plates must be approved by the Division and the State Highway Patrol for clarity and ease of identification. G.S. 20-63(b).

Purposes	Additional Fees
Carolina's Aviation Museum. – Founded in 1991, the museum is dedicated to preserving the aviation heritage of North and South Carolina. The Museum is located in Charlotte, NC. The additional fee revenue generated from the sale of the plates must be used by the Carolinas Historic Aviation Commission to help continue operation of the Museum. ***Sponsor:*** *Representatives Vinson and Faison (HB 2683)*	**$15.00**
Emergency Medical Technician. – Issuable to an emergency medical technician. There is already a special plate authorized for firefighters and rescue squads. ***Sponsor:*** *Representative Harrison and Glazier (HB 2073)*	**$10.00**
Fox Hunting. – Fox hunting is a growing sport and an economic factor in eastern North Carolina. ***Sponsor:*** *Representative Crawford (Requested amendment)*	**$10.00**
Leukemia and Lymphoma Society. – The additional fee revenue generated from the sale of the plate will be transferred to the Eastern Chapter of the North Carolina Leukemia & Lymphoma Society. The funds may be divided between the Eastern and Western chapters of the North Carolina Leukemia & Lymphoma Society. The funds must be used for blood cancer research, awareness, and education. ***Sponsor:*** *Representatives Weiss; Capps, and Faison (HB 2511)*	**$15**
Lung Association. – The additional fee revenue generated from the sale of the plate will be transferred to the American Lung Association of North Carolina, Inc. to be used for eliminating lung disease and fostering healthy breathing for all people through prevention, outreach, education, research, and advocacy. ***Sponsor:*** *Representative Harrison, Martin, Fisher, Haire; Glazier (HB 2072)*	**$15**
Prince Hall Mason – The additional fee revenue derived from the sale of the plate will be transferred to The Most Worshipful Prince hall Grand Lodge of Free and Accepted Masons of North Carolina and Jurisdiction, Inc. to be used for scholarships, family assistance, and other charitable causes. ***Sponsor:*** *Representative Pierce, Wainwright; and Faison (HB 2690)*	**$20**
NC Children's Promise. – The North Carolina's Children's Promise is a statewide initiative to promote North Carolina's Children's Hospital. Its mission is to secure financial and community resources to provide comprehensive, family-centered healthcare for children of North Carolina. It began in 2002 as a partnership between the N.C. Children's Hospital and the Curtis Media Group. The additional fee revenue generated from the sale of the plates will be transferred to The Medical Foundation of North Carolina, Incorporated, to be used to support the N.C. Children's Promise. ***Sponsor:*** *Representative Insko (HB 2459)*	**$25**
Support Our Troops. – Support Our Troops is a nonprofit organization whose purpose is to provide financial assistance to the troops and their families. The additional fee revenue generated from the sale of the plate will be used to provide support and assistance to the troops and their families. ***Sponsor:*** *Representative Glazier, Dickson, Grady, Pate; Blackwood, Cleveland, Current, Faison, Harrison, McGee, Pierce, Preston, Rapp, Setzer, Spear, Steen, Underhill, Vinson, Wainwright, and Weiss (HB 1993)*	**$30**
U. S. Equine Rescue League. – The United States Equine Rescue League's mission is to save, protect, and rehabilitate equines in need. It rescues an average on one hundred equines a year. The additional fee revenue generated from the sale of the plate will be used for the care and upkeep of rescued equines. ***Sponsor:*** *Representative Underhill (HB 2245)*	**$20**

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☐ Committee Substitute for

HB 1993 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE A SUPPORT OUR TROOPS SPECIAL REGISTRATION PLATE.

☒ With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

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

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 2433
PROPOSED COMMITTEE SUBSTITUTE H2433-CSLAx-37 [v.8]

6/8/2006 12:10:07 AM

Short Title: 2006 Fee Bill. (Public)

Sponsors:

Referred to:

May 24, 2006

A BILL TO BE ENTITLED

AN ACT TO SET THE PUBLIC UTILITIES REGULATORY FEE AND THE INSURANCE REGULATORY CHARGE, TO AUTHORIZE A PRIVATE-WELL WATER TESTING FEE, TO CLARIFY FEES FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICE FACILITIES, TO MAKE A TECHNICAL CORRECTION TO LICENSURE FEE CAP FOR REVIEW OF HEALTH CARE FACILITY CONSTRUCTION PROJECTS, TO REPEAL THE FEE FOR MINE SAFETY EDUCATION/TRAINING PROGRAMS, TO INCREASE THE PUBLIC WATER SYSTEMS ANNUAL OPERATING PERMIT FEE, AND TO IMPOSE A NON-COMMUNITY WATER SYSTEMS FEE.

The General Assembly of North Carolina enacts:

PART I. SET RATES FOR INSURANCE REGULATORY CHARGE AND PUBLIC UTILITIES FEES

INSURANCE REGULATORY CHARGE

SECTION 1.1.(a) The percentage rate to be used in calculating the insurance regulatory charge under G.S. 58-6-25 is five and one-half percent (5.5%) for the 2006 calendar year.

SECTION 1.1.(b) This section becomes effective July 1, 2006.

REGULATORY FEE FOR UTILITIES COMMISSION

SECTION 1.2.(a) The percentage rate to be used in calculating the public utility fee under G.S. 62-302(b)(2) is twelve-hundredths of one percent (0.12%) for each public utility's North Carolina jurisdictional revenues earned during each quarter that begins on or after July 1, 2006.

SECTION 1.2.(b). The electric membership corporation regulatory fee imposed under G.S. 62-302(b1) for the 2006-2007 fiscal year is two hundred thousand dollars ($200,000).

SECTION 1.3.(c). This section becomes effective July 1, 2006.

PART II. HEALTH AND HUMAN SERVICES FEES

PRIVATE WELL-WATER TESTING FEE

SECTION 2.1.(a) G.S. 130A-5 is amended by adding the following new subdivision to read:

"**§ 130A-5. Duties of the Secretary.**

The Secretary shall have the authority:

...

"(16) To charge a fee for analyzing private well-water samples sent to the State Laboratory of Public Health by local health departments. The fee shall be imposed only for analyzing samples from newly constructed wells. The fee shall be computed annually by the Director of the State Laboratory of Public Health by analyzing the previous year's testing at the State Laboratory of Public Health, and applying the amount of the total cost of the private well-water testing , minus State appropriations that support this effort. The fee amount shall be effective during the current fiscal year. The fee shall be in addition to the charge for the private well-water panel test kit."

SECTION 2.1.(b) Effective July 1, 2006, the fee for analyzing private water samples sent to the State Laboratory of Public Health by local health departments shall be fifty-five dollars ($55.00) per sample. The fee shall be imposed only for analyzing samples from newly constructed wells. Effective July 1, 2007, the fee for analyzing private water samples sent to the State Laboratory of Public Health by local health departments shall be as determined by the Director of the State Laboratory pursuant to G.S. 130A-5(16).

SECTION 2.1.(c) The Department of Health and Human Services, Division of Public Health, shall use funds available for the 2006-2007 fiscal year to pay for positions authorized in this act. Funds realized from fees collected during the 2006-2007 fiscal year shall be used to replace available funds allocated for this purpose for the 2006-2007 fiscal year.

SECTION 2.1.(d) Except as otherwise provided, this section becomes effective July 1, 2006.

CLARIFICATION OF FEES FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICE FACILITIES

SECTION 2.2.(a) G.S. 122C-23(h) reads as rewritten:

"(h) The Department shall charge facilities licensed under this Chapter ~~that have licensed beds~~ a nonrefundable annual base license fee plus a nonrefundable annual per-bed fee as follows:

Type of Facility	Number of Beds	Base Fee	Per-Bed Fee
Facilities (non ICF/MR):	0 beds	$175.00	$0
~~Facilities (non ICF/MR):~~			
	~~6 of fewer~~		
	1 to 6 beds	$250.00	$0
	More than 6 beds	$350.00	$12.50
ICF/MR Only:	~~6 or fewer~~		
	1 to 6 beds	$650.00	$0
	More than 6 beds	$650.00	$12.50"

SECTION 2.2.(b) This section becomes effective July 1, 2006.

TECHNICAL CORRECTION TO LICENSURE FEE LIMITS

SECTION 2.3.(a) G.S. 131E-267 reads as rewritten:

"**§ 131E-267. Fees for departmental review of health care facility construction projects.**

The Department of Health and Human Services shall charge a fee for the review of each health care facility construction project to ensure that project plans and construction are in compliance with State law. The fee shall be charged on a one-time, per-project basis, as follows, and shall not exceed ~~twelve thousand five hundred dollars ($12,500)~~twenty-five thousand dollars ($25,000) for any single project:

Institutional Project	**Project Fee**
Hospitals	$ 300.00 plus $0.20/square foot of project space
Nursing Homes	$ 250.00 plus $0.16/square foot of project space
Ambulatory Surgical Facility	$ 200.00 plus $0.16/square foot of project space
Psychiatric Hospital	$ 200.00 plus $0.16/square foot of project space
Adult Care Home	
7 or more beds	$ 175.00 plus $0.10/square foot of project space

Residential Project	**Project Fee**
Family Care Homes	$ 175.00 flat fee
ICF/MR Group Homes	$ 275.00 flat fee
Group Homes: 1-3 beds	$ 100.00 flat fee
Group Homes: 4-6 beds	$ 175.00 flat fee
Group Homes: 7-9 beds	$ 225.00 flat fee
Other residential:	
More than 9 beds	$ 225.00 plus $0.075/square foot of project space."

SECTION 2.3.(b) This section becomes effective July 1, 2006.

PART III. NATURAL AND ECONOMIC RESOURCES FEES

REPEAL FEE FOR MINE SAFETY EDUCATION/TRAINING PROGRAMS

SECTION 3.1.(a) G.S. 74-24.16(d) is repealed.

SECTION 3.1.(b) This section becomes effective July 1, 2006.

INCREASE PUBLIC WATER SYSTEMS ANNUAL OPERATING PERMIT FEES/IMPOSE CERTAIN ANNUAL OPERATING PERMIT FEES FOR DISTRIBUTION SYSTEMS

SECTION 3.2.(a) G.S. 130A-328 reads as rewritten:

"**§ 130A-328. ~~Community~~ Public water system operating permit and permit fee.**

(a) No person shall operate a ~~community~~ public water system who has not been issued an operating permit by the Department. A ~~community~~ public water system operating permit shall be valid from January 1 through December 31 of each year unless suspended or revoked by the Department for cause. The Commission shall adopt rules concerning permit issuance and renewal and permit suspension and revocation. The annual fees in subsection (b) shall be prorated on a monthly basis for permits obtained after January 1 of each year.

(b) The following fees are imposed for the issuance or renewal of a permit to operate a ~~community~~ public water system; the fees are based on the number of persons served by the system:

~~Number of Persons Served~~	Fee
~~100 or fewer~~	~~$150~~
~~More than 100 but no more than 500~~	~~$175~~
~~More than 500 but no more than 3300~~	~~$300~~
~~More than 3300 but no more than 5000~~	~~$450~~
~~More than 5000 but no more than 10,000~~	~~$550~~
~~More than 10,000 but no more than 50,000~~	~~$650~~
~~More than 50,000~~	~~$850~~
Non Community Water Systems:	
Base Fee:	
Non transient non-community	$150
Community Water Systems:	
Number of Persons Served	
50 or fewer	$255
More than 50 but no more than 100	$270
More than 100 but no more than 200	$330
More than 200 but no more than 300	$350
More than 300 but no more than 400	$385
More than 400 but no more than 500	$420
More than 500 but no more than 750	$780
More than 750 but no more than 1000	$810
More than 1000 but no more than 2000	$840
More than 2000 but no more than 3000	$870
More than 3000 but no more than 4000	$1350
More than 4000 but no more than 5000	$1460
More than 5000 but no more than 7500	$1925
More than 7500 but no more than 10,000	$2065

More than 10,000 but no more than 25,000	$2600
More than 25,000 but no more than 50,000	$2925
More than 50,000 but no more than 75,000	$4250
More than 75,000 but no more than 100,000	$4675
More than 100,000 but no more than 250,000	$5100
More than 250,000 but no more than 500,000	$5525
More than 500,000	$5950

Distribution system:	Fee
Construction of water lines, less than 5000 linear feet	$150
Construction of water lines, 5000 linear feet or more	$200
Other construction or alteration to a distribution system	$75

Ground water system:	
Construction of a new ground water system or adding a new well	$200
Alteration to an existing ground water system	$100

Surface Water system:	
Construction of a new surface water treatment facility	$250
Alteration to an existing surface water treatment facility	$150
Water System Management Plan review	$75
Miscellaneous changes or maintenance not covered above	$50

(c) The Department may charge an administrative fee of up to one hundred fifty dollars ($150.00) for failure to pay the permit fee by January 31 of each year.

(d) The Department may revise the operating permit fee to reflect inflationary increases as long as the increase is no greater than the Consumer Price Index."

(e) All fees collected under this section shall be applied to the costs of administering and enforcing this Article."

SECTION 3.2.(b) The Department of Environment and Natural Resources may create a schedule for phasing in the new fees added to G.S. 130A-328, as amended by subsection (a) of this section, over multiple operating permit cycles.

SECTION 3.2.(c) This section becomes effective July 1, 2006.

EFFECTIVE DATE

SECTION 4.1. Except as otherwise provided, this act becomes effective July 1, 2006.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 2433

Short Title:	Finance Law Changes - 1.	(Public)
Sponsors:	Representative Luebke.	
Referred to:	Finance.	

May 24, 2006

A BILL TO BE ENTITLED

AN ACT TO SUNSET THE INCREASE IN THE STATE SALES AND USE TAX RATE EARLY.

The General Assembly of North Carolina enacts:

SECTION 1. Section 34.13(c) of S.L. 2001-424, as amended by Section 38.1 of S.L. 2003-284, Section 9.1 of S.L. 2005-144, and Section 33.1 of S.L. 2005-276, reads as rewritten:

"**SECTION 34.13.(c)** This section becomes effective October 16, 2001, and applies to sales made on or after that date. This section is repealed effective for sales made on or after ~~July~~ June 1, 2007. This section does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this section before the effective date of its amendment or repeal; nor does it affect the right to any refund or credit of a tax that accrued under the amended or repealed statute before the effective date of its amendment or repeal."

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

HOUSE BILL 2433: 2006 Fee Bill

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 8, 2006
Introduced by:	Rep. Luebke	**Summary by:**	Martha Walston
Version:	PCS to First Edition H2433-CSLAx-37		Committee Counsel

SUMMARY: The proposed committee substitute for House Bill 2433 does the following:

- ***It sets the insurance regulatory charge (5.5%), the public utility regulatory fee (0.12%), and the fee for electric membership corporations ($200,000) at the same rates as last year.***
- ***It authorizes the Secretary of the Department of Health and Human Services to charge a fee for private well-water samples sent to the State Laboratory of Public Health by local health departments. The fee will initially be set at $55. It gives the Department authority to use available funds for positions authorized in the act and directs that fees collected during the 2006-2007 fiscal year be used to replace available funds allocated for this purpose.***
- ***It establishes a separate annual licensure fee of $175 for non-ICF/MR facilities with zero beds.***
- ***It makes a technical correction to the cap on the licensure fee charged by the Department of Health and Human Services for its review of a health care facility construction project.***
- ***It repeals the $50 fee for mine safety education and training program.***
- ***It increases the existing community water system operating fees, charges a new operating permit fee ($150) on non-community water systems, and charges a new plan review fee ($75).***

BILL ANALYSIS:

PART I. INSURANCE REGULATORY CHARGE AND PUBLIC UTILITIES FEES

Section 1.1 of the bill retains the current rate for the insurance regulatory fee of 5.5%. The insurance regulatory charge was first enacted in 1991 to defray the State's cost of regulating the insurance industry. The charge is a percentage of each insurance company's gross premiums tax liability.

Section 1.2 of the bill retains the current rate for the public utility regulatory fee of 0.12% for each public utility's jurisdictional revenues. The rate has remained the same for the past three years. The rate for this fee must be set each year by the General Assembly. The utility regulatory fee is a tax that was first imposed in 1989. The proceeds of the fee are credited to the Utilities Commission and Public Staff Fund and used to defray the State's cost in regulating public utilities.[1] The regulatory fee is imposed on all utilities that are subject to regulation by the North Carolina Utilities Commission. The fee is a percentage of the utility's

[1] In addition to funding the State's cost in regulating public utilities, the money in the Utilities Commission and Public Staff Fund is currently used to finance the work of the Study Commission on the Future of Electric Service in North Carolina. The General Assembly established the Commission in 1997 to examine the cost, adequacy, availability, and pricing of electric service in North Carolina to determine whether legislation is necessary to assure an adequate and reliable source of electricity and economical, fair, and equitable rates for all consumers of electricity in North Carolina. Section 14.10 of S.L. 2000-67, the Current Operations and Capital Improvements Appropriations Act of 2000, extended the life of the Study Commission and its funding from the Utilities Commission and Public Staff Fund through June 30, 2006.

North Carolina jurisdictional revenues. In general, jurisdictional revenue is derived from providing utility service in North Carolina.

Section 1.2 of the bill also sets at $200,000 for the 2006-2007 fiscal year the annual public utility regulatory fee imposed on electric membership corporations whose principal purpose is to furnish or cause to be furnished bulk electric supplies at wholesale. The new rate is the same as the rate in effect for the preceding five fiscal years. The proceeds of the fee are credited to the Utilities Commission and Public Staff Fund and used to defray the State's cost in regulating electric membership corporations.[2]

PART II. HEALTH AND HUMAN SERVICES FEES

Private Well-Water Testing Fee Section. 2.1 gives the Secretary of the Department of Health and Human Services the authority to charge a fee for private well-water samples from newly constructed wells when the samples are sent to the State Laboratory of Public Health by local health departments. The fee will initially be set at $55. In subsequent years, the fee will be set by the Director of the State Laboratory based on the previous year's testing, the total cost of the testing, and any State appropriations available. This section gives the Division of Public Health the authority to use available funds to pay for positions authorized for this purpose for the 2006-2007 fiscal year and directs that fees collected during the 2006-2007 fiscal year be used to replace available funds allocated for this purpose.

Clarification of Fees for Mental Health, Developmental Disabilities, and Substance Abuse Service Facilities. Section 2.2 establishes a separate annual licensure fee of $175 for non-ICF/MR facilities with zero beds. According to the Department of Health and Human Services, Division of Facility Services, there are 1,286 non-ICF/MR facilities with zero beds that would be eligible for this fee.

Technical Correction to Licensure Fee Limits. Section 2.3 makes a technical correction to licensure fee limits. In 2005, the General Assembly raised construction and licensure fee amounts, but a licensure cap on the fee that DHHS shall charge for the review of each health care facility construction project was inadvertently not raised at the same time. This section raises that cap from $12,500 to the intended limit of $25,000, for any single project.

PART III NATURAL AND ECONOMIC RESOURCES FEES

Repeal Fee for Mine Safety Education/Training Programs. In 2005, the General Assembly authorized the Commissioner of Labor to establish fees not to exceed $50 for each person participating in mine safety education and training programs provided by the Department of Labor. The Department was required to take a corresponding General Fund reduction of $270,000. This fee has not generated sufficient revenue to support the Mine Safety Education and Training program. Section 3.1 would repeal this fee.

---

[2] The 1999 General Assembly enacted S.L. 1999-180, which authorized electric membership corporations to form subsidiary corporations that may provide energy services and products, telecommunications services and products, and water and wastewater collection and treatment. The subsidiary must fully compensate the electric membership corporation for its use of the corporation's personnel, services, equipment, and property. The Utilities Commission is charged with regulating this aspect of the subsidiary's business and, to pay for this regulation, S.L. 1999-180 levied a flat-rate regulatory fee to be paid annually by the North Carolina Electric Membership Corporation. The General Assembly must establish the fee amount each year. The North Carolina Electric Membership Corporation is the only electric membership corporation whose principal purpose is to furnish or cause to be furnished bulk electric supplies at wholesale as provided in G.S. 117-16. It is a "generation and supply cooperative" owned by its members. Its members are all but one of the existing North Carolina electric membership corporations, which are "distribution cooperatives." Thus, the fee imposed on the North Carolina Electric Membership Cooperation will be passed on to its member electric membership corporations

Increase Public Water Systems Annual Operating Permit Fees/Impose Certain Annual Operating Permit Fees for Distribution Systems. Community water systems are required by statute to pay an annual operating permit fee. The fee is based on the number of persons served by the system. The fees have not been increased since 1992. Section 3.2 would increase the existing community water system operating fees, charge a new operating permit fee on non-community water systems, and charge a new plan review fee. The Department of Environment and Natural Resources plans to use the additional revenue to hire nineteen new employees responsible for field response, complaint investigation, inspections, technical assistance, rule implementation, training, compliance oversight, lab support, and review and approval of water systems' management plans and capacity development documents.

EFFECTIVE DATE: Except as otherwise provided, this act becomes effective July 1, 2006

H2433e1-SMLA-CSLA

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

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

DATE: June 7, 2006

TO: Representatives Luebke and Wainwright

FROM: Linda Struyk Millsaps, Susan Morgan, Amna Cameron, Andrea Russo, Kristin Walker. Fiscal Research Division

RE: House Bill 2433 – Set Fees - PCS

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES:					
Insurance Reg. Fee		* See Assumptions and Methodology *			
Utility Reg. Fees		* See Assumptions and Methodology *			
Well Testing Fee	915,530	1,121,285	1,430,000	1,430,000	1,430,000
Mental Health Fees	225,050	225,050	225,050	225,050	225,050
Licensure Fee Limit Correction		* See Assumptions and Methodology *			
Repeal Mine Fee		(Potential Loss of up to $270,000)			
Public Water Permit Fees	1,250,726	1,250,726	1,250,726	1,250,726	1,250,726

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Insurance, Utility Commission, Department of Health and Human Services, Department of Labor, Department of Environment and Natural Resources.

EFFECTIVE DATE: July 1, 2006.

BILL SUMMARY: The bill sets numerous fees for services provided by state agencies. These include setting both the insurance regulatory fee and the utility fee, which must be set by statute each year. In addition, the bill makes changes to fees in the Department of Labor, the Department of Environment and Natural Resources, and the Department of Health and Human Services.

ASSUMPTIONS AND METHODOLOGY:

Part 1: Utilities Regulatory Fee: Each year the General Assembly must, by statute, set the utilities regulatory fee. This fee is used to offset the cost of regulating the industry. The legislation sets the fee at 0.12%, which is the same rate as the previous year. The utilities regulatory fee currently generates approximately $12.6 million annually. In addition, the legislation sets a flat regulatory fee of $200,000 to be charged to the electric membership corporations for their regulation. There are 27 local EMC's across North Carolina. These EMCs contribute to the state North Carolina Electric Membership Corporation (NCEMC), who then pays the fee.

Part 2: Insurance Regulatory Fee: Each year the General Assembly must set the insurance regulatory fee. This fee is charged by the Department to cover the cost of regulating the industry. The legislation sets the insurance regulatory fee at 5.5%. As the chart below indicates, this is the same rate as the previous year.

Calendar Year	Reg Surcharge Rates		Surcharge Collections
2000	7.00%	$	21,091,129
2001	6.50%	$	26,053,987
2002	6.50%	$	24,695,317
2003	5.00%	$	30,671,730
2004	5.00%	$	16,800,921
2005	5.50%	$	21,377,994

The fee is expected to generate $26.0 million.

Part 3: Health and Human Services Fees: This part of the bill makes changes in three areas in the Department of Health and Human Services.

Private-Well Water Testing Fee

Section 2.1 gives the Secretary of the Department of Health and Human Services the authority to charge a fee for private well water samples from newly constructed wells sent to the State Public Heath Lab by local health departments. The fee will initially be set at $55, and will be set in subsequent years by the director of the lab based on the previous year's testing, the total cost of the testing, and any state appropriations available. The section also gives the Division of Public Health the authority to use available funds to pay for positions authorized for this purpose for the 2006-2007 fiscal year, and directs that fees collected during the 2006-2007 fiscal year to be used to replace available funds allocated for this purpose.

In State Fiscal Year 2006-2007, the Division of Public Health estimates that 16,646 private well-water samples from newly constructed wells will be submitted. This would generate $915,530 in revenue ($55 x 16,646). In State Fiscal Year 2007-2008, the Division of Public Health estimates that 20,387 samples will be submitted, generating $1,121,285 in revenue ($55 x 20,387). In future years the number of samples is expected to increase to 26,000, generating approximately $1,430,000 per year in revenue.

Clarification of Fees for Mental Health, Developmental Disabilities, and Substance Abuse Service Facilities

Section 2.2 establishes a separate annual licensure fee of $175 for non-ICF/MR facilities with zero beds. According to the Department of Health and Human Services, Division of Facility Services, there are 1,286 non-ICF/MR facilities with zero beds that would be eligible for this fee. This would generate an estimated $225,050 annually ($175 x 1,286 facilities).

Note: There is a provision in SB1741 (Section 10.29) that would reduce the number of zero-bed facilities that need licensure. If this provision becomes law, then the estimated revenue for this fee would be reduced to $127,750 ($175 x 730 facilities).

Technical Correction to Licensure Fee Limits

This section makes a technical correction to licensure fee limits. In 2005, the General Assembly raised construction and licensure fee amounts, but a licensure cap on the total construction fees charged to any one projected was inadvertently not raised at the same time. This section raises that cap to the intended limit. No fiscal impact is expected.

Part 4: Natural and Economic Resource Fees: This part of the bill makes two fee changes related to Departments covered by the Natural and Economic Resources Committee

Repeal Fee for Mine Safety Education/Training Programs

In 2005-2006, the General Assembly created a $50 fee for mine safety education and training programs and required that the Department of Labor take a corresponding General Fund reduction of $270,000. This fee has not generated sufficient revenue to support the Mine Safety Education and Training program, and this provision would repeal the fee. The Senate Budget Bill 1741 and the proposed House budget include $200,000 (R) in restored General Fund funding; the department will restore the remaining $70,000 from other sources.

Increase Public Water Systems Annual Operating Permit Fees/Impose Certain Annual Operating Permit Fees for Distribution Systems

Community water systems are required by statute to pay an annual operating permit fee. This fee has not been increased since 1992. This fee currently generates approximately $489,144 in revenue. The proposed fee increase would:

1) Increase the existing community water system operating permit fees
2) Charge a new operating permit fee on non-community water systems
3) Charge a new plan review fee

The total estimated *increase* is $1,250,726, with total estimated revenue of $1,739,870. The Department would use the additional revenue to hire nineteen (19.0) new employees responsible for field response, complaint investigation, inspections, technical assistance, rule implementation, training, compliance oversight, lab support, and review and approval of water systems' management plans and capacity development documents.

SOURCES OF DATA: Department of Insurance, Utility Commission, Department of Health and Human Services, Department of Labor, Department of Environment and Natural Resources.

TECHNICAL CONSIDERATIONS: None

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

ATTACHMENT 6

EDITION No. _____

H. B. No. 2433 DATE June 8, 2006

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

Rep.) Wainwright
Sen.)

1 moves to amend the bill on page 2, line 14
2 ( ) WHICH CHANGES THE TITLE
3 by adding the phrase "of up to fifty-five
4 dollars ($55.00)" between the words
5 "fee" and "for";
6
7 and by deleting lines 24-30
8
9
10
11
12
13
14
15
16
17
18
19

SIGNED Rwainwright

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

ATTACHMENT 7

EDITION No. _____

H. B. No. 2433 DATE June 8, 2006

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

(Rep.) Howard
Sen.)

1 moves to amend the bill on page 5, line 25-26

2 ( ) WHICH CHANGES THE TITLE

3 by deleting those lines

4

5

6

7

9

10

11

12

13

14

15

16

17

18

19

SIGNED

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 2384
PROPOSED COMMITTEE SUBSTITUTE H2384-CSLA-38 [v.8]

6/7/2006 8:35:24 PM

Short Title: Cap Variable Rate of the Gasoline Excise Tax. (Public)

Sponsors:

Referred to:

May 23, 2006

A BILL TO BE ENTITLED

AN ACT TO STABILIZE THE MOTOR FUEL TAX BY IMPOSING A CAP ON THE VARIABLE WHOLESALE COMPONENT OF THE MOTOR FUEL TAX RATE AT ITS CURRENT RATE AND PROVIDING RELIEF FOR CONSUMERS BY PROVIDING FOR PRICE GOUGING INVESTIGATIONS BY THE ATTORNEY GENERAL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-449.80(a) reads as rewritten:

"(a) Rate. – The motor fuel excise tax rate is a flat rate of seventeen and one-half cents (17 1/2¢)a gallon plus a variable wholesale component. The variable wholesale component is either three and one-half cents (3 1/2¢) a gallon or seven percent (7%) of the average wholesale price of motor fuel for the applicable base period, whichever is greater. In no case may the variable wholesale component be greater than twelve and four-tenths cents (12.4¢) a gallon.

The two base periods are six-month periods; one ends on September 30 and one ends on March 31. The Secretary must set the tax rate twice a year based on the wholesale price for each base period. A tax rate set by the Secretary using information for the base period that ends on September 30 applies to the six-month period that begins the following January 1. A tax rate set by the Secretary using information for the base period that ends on March 31 applies to the six-month period that begins the following July 1."

SECTION 2. G.S. 75-38 reads as rewritten:

"**§ 75-38. Prohibit excessive pricing during states of disaster.**

(a) It shall be a violation of G.S. 75-1.1 for any person to sell or rent or offer to sell or rent at retail during a state of disaster, in the area for which the state of disaster has been declared, any merchandise or services which are consumed or used as a direct result of an emergency or which are consumed or used to preserve, protect, or sustain life, health, safety, or comfort of persons or their property with the knowledge and

intent to charge a price that is unreasonably excessive under the circumstances. In determining whether a price is unreasonably excessive, it shall be considered whether:

(1) The price charged by the seller is attributable to additional costs imposed by the seller's supplier or other costs of providing the good or service during the state of disaster; and

(2) The seller offered to sell or rent the merchandise or service at a price that was below the seller's average price in the preceding 60 days before the state of ~~disaster.~~disaster; and

(3) The seller was pricing above market prices when no alternative seller was available.

If the seller did not sell or rent or offer to sell or rent the merchandise or service in question prior to the time the state of disaster was declared, the price at which the merchandise or service was generally available in the trade area shall be used as a factor in determining if the seller is charging an unreasonably excessive price.

(b) In the event the Attorney General investigates a complaint for a violation of this section and determines that the seller has not violated the provisions of this section and if the seller so requests, the Attorney General shall promptly issue a signed statement indicating that the Attorney General has not found a violation of this section. The Attorney General shall maintain the confidentiality of all evidence, testimony, documents, statements, or other results of an investigation under this section, including the names of the complainant and the individual, corporation, or other entity that is the subject of the investigation. Nothing herein shall be construed to prevent the presentation or disclosure of any information or evidence in an action or proceeding brought under this section or pursuant to an order from a court of competent jurisdiction.

(c) For the purposes of this section, the end of a state of disaster is the earlier of 45 days or the termination of a natural or man-made disaster or emergency as declared in accordance with G.S. 166A-6 or G.S. 166A-8.

(d) The Office of the Governor shall maintain a mailing list of individuals who have requested, in writing, notice of the issuance of a declaration of a state of disaster or emergency. When the Office of the Governor declares a state of disaster or emergency, it must provide, by electronic or U.S. mail, a copy of the declaration to each individual on the list."

SECTION 3. G.S. 166A-4(1) reads as rewritten:

"(1) Disaster. – An occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property or to economic well-being resulting from any natural or man-made incidental, accidental, military or paramilitary cause."

SECTION 4. There is reserved from the 2006-2007 General Fund availability the following:

Reserve for Highway Fund Hold Harmless	($17,600,000)
Reserve for Highway Trust Fund Hold Harmless	($5,700,000)

SECTION 5. The State Treasurer shall transfer funds reserved to hold harmless the Highway Fund and the Highway Trust Fund from the General Fund to the Highway Fund and the Highway Trust Fund as set out in Section 4 of this act only if the

variable wholesale component of the motor fuel excise tax rate in G.S. 105-449.80 would, without the imposition of the cap imposed by Section 1 of this act, exceed twelve and four-tenths cents (12.4¢) a gallon. A transfer required under this section must be made on a monthly basis. The amount to be transferred from the General Fund to the Highway Fund is the difference between the amount of motor fuel excise tax revenue allocated to the Highway Fund under G.S. 105-449.125 for a month and the amount that would have been allocated to it if the variable wholesale component were not capped at twelve and four-tenths cents (12.4¢) a gallon. The total amount transferred to the Highway Fund under this section during fiscal year 2006-2007 may not exceed seventeen million six hundred thousand dollars ($17,600,000). The amount to be transferred from the General Fund to the Highway Trust Fund is the difference between the amount of motor fuel excise tax revenue allocated to the Highway Trust Fund under G.S. 105-449.125 for a month and the amount that would have been allocated to it if the variable wholesale component were not capped at twelve and four-tenths cents (12.4¢) a gallon. The total amount transferred to the Highway Trust Fund under this section during fiscal year 2006-2007 may not exceed five million seven hundred thousand dollars ($5,700,000).

It is the intent of the General Assembly that the reserve provisions set out in Section 4 of this act and the hold-harmless provisions set out in this section also apply to the 2007-2008 fiscal year.

SECTION 6. This act becomes effective July 1, 2006. Section 1 is repealed July 1, 2008.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 2384

Short Title:	Cap Variable Rate of the Gasoline Excise Tax.	(Public)
Sponsors:	Representatives Gibson, Coates, Underhill, Goforth (Primary Sponsors); Alexander, B. Allen, L. Allen, Bell, Carney, Church, Coleman, Cunningham, England, Faison, Farmer-Butterfield, Fisher, Glazier, Hackney, Haire, Harrison, Hill, Holliman, Howard, Jeffus, Ed Jones, Lewis, Lucas, Luebke, McAllister, McLawhorn, Nye, Parmon, Pierce, Rapp, Saunders, Setzer, Spear, Steen, Tolson, Tucker, Warren, Weiss, Wilkins, Williams, Womble, Wray, and Yongue.	
Referred to:	Finance.	

May 23, 2006

A BILL TO BE ENTITLED

AN ACT TO STABILIZE THE MOTOR FUEL TAX BY IMPOSING A CAP ON THE VARIABLE WHOLESALE COMPONENT OF THE MOTOR FUEL TAX RATE AT ITS CURRENT RATE AND PROVIDING RELIEF FOR CONSUMERS BY PROVIDING FOR PRICE GOUGING INVESTIGATIONS BY THE ATTORNEY GENERAL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-449.80(a) reads as rewritten:

"(a) Rate. – The motor fuel excise tax rate is a flat rate of seventeen and one-half cents (17 1/2¢)a gallon plus a variable wholesale component. The variable wholesale component is either three and one-half cents (3 1/2¢) a gallon or seven percent (7%) of the average wholesale price of motor fuel for the applicable base period, whichever is greater. In no case may the variable wholesale component be greater than twelve and four-tenths cents (12.4¢) a gallon.

The two base periods are six-month periods; one ends on September 30 and one ends on March 31. The Secretary must set the tax rate twice a year based on the wholesale price for each base period. A tax rate set by the Secretary using information for the base period that ends on September 30 applies to the six-month period that begins the following January 1. A tax rate set by the Secretary using information for the base period that ends on March 31 applies to the six-month period that begins the following July 1."

SECTION 2. G.S. 75-38 reads as rewritten:

"**§ 75-38. Prohibit excessive pricing during states of disaster.**

(a) It shall be a violation of G.S. 75-1.1 for any person to sell or rent or offer to sell or rent at retail during a state of disaster, in the area for which the state of disaster has been declared, any merchandise or services which are consumed or used as a direct result of an emergency or which are consumed or used to preserve, protect, or sustain life, health, safety, or comfort of persons or their property with the knowledge and intent to charge a price that is unreasonably excessive under the circumstances. In determining whether a price is unreasonably excessive, it shall be considered whether:

(1) The price charged by the seller is attributable to additional costs imposed by the seller's supplier or other costs of providing the good or service during the state of disaster; and

(2) The seller offered to sell or rent the merchandise or service at a price that was below the seller's average price in the preceding 60 days before the state of ~~disaster.~~disaster; and

(3) The seller was pricing above market prices when no alternative seller was available.

If the seller did not sell or rent or offer to sell or rent the merchandise or service in question prior to the time the state of disaster was declared, the price at which the merchandise or service was generally available in the trade area shall be used as a factor in determining if the seller is charging an unreasonably excessive price.

(b) In the event the Attorney General investigates a complaint for a violation of this section and determines that the seller has not violated the provisions of this section and if the seller so requests, the Attorney General shall promptly issue a signed statement indicating that the Attorney General has not found a violation of this section. The Attorney General shall maintain the confidentiality of all evidence, testimony, documents, statements, or other results of an investigation under this section, including the names of the complainant and the individual, corporation, or other entity that is the subject of the investigation. Nothing herein shall be construed to prevent the presentation or disclosure of any information or evidence in an action or proceeding brought under this section or pursuant to an order from a court of competent jurisdiction.

(c) For the purposes of this section, the end of a state of disaster is the earlier of 45 days or the termination of a natural or man-made disaster or emergency as declared in accordance with G.S. 166A-6 or G.S. 166A-8.

(d) The Office of the Governor shall maintain a mailing list of individuals who have requested, in writing, notice of the issuance of a declaration of a state of disaster or emergency. When the Office of the Governor declares a state of disaster or emergency, it must provide, by electronic or U.S. mail, a copy of the declaration to each individual on the list."

SECTION 3. G.S. 166A-4(1) reads as rewritten:

"(1) Disaster. – An occurrence or imminent threat of widespread or severe damage, injury, economic well-being, or loss of life or property resulting from any natural or man-made incidental, accidental, military or paramilitary cause."

SECTION 4. There is appropriated from the General Fund to the Highway Fund and Highway Trust Fund an appropriate amount of funds to offset the loss of revenue from capping the motor fuels excise tax.

SECTION 5. This act becomes effective July 1, 2006.

or

HOUSE BILL 2384:
Cap Variable Rate of the Gasoline Excise Tax

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 7, 2006
Introduced by:	Reps. Gibson, Coates, Underhill, Goforth	**Summary by:**	Martha Walston
Version:	PCS to First Edition H2284-CSLA		Committee Counsel

SUMMARY: House Bill 2384 does the following:

- ***Caps the wholesale component of the motor fuel excise tax rate at 12.4¢ per gallon. The cap sunsets July 1, 2008.***
- ***Creates a reserve fund of $23.3 million to be used to hold harmless the Highway Fund and the Highway Trust Fund in the event that the variable wholesale component of the motor fuel excise tax would exceed 12.4 ¢ per gallon if it were not capped. Reserve funds may be transferred during the fiscal year 2006-2007. However, it is the intent of the General Assembly that the reserve provisions and hold-harmless provisions also apply to fiscal year 2007-2008.***
- ***Adds language to G.S. 75-38 (Prohibit excessive pricing during states of disaster) that when determining whether a price is unreasonably excessive, one must consider whether the seller was pricing above market prices when no alternative seller was available.***
- ***Requires the Attorney General to maintain the confidentiality of any evidence or other results of an excessive pricing investigation, except in an action brought under G.S. 75-38 or by court order.***
- ***Directs the Office of the Governor to maintain a list of people who have requested written notice of a declaration of a state of disaster or emergency, and to send them notice electronically or by mail.***
- ***Amends the definition of disaster under the N.C. Emergency Management Act of 1977 to include an occurrence or imminent threat of widespread or severe damage, injury, or loss to economic well-being resulting from a natural or man-made incidental cause.***

CURRENT LAW: The motor fuel excise tax is imposed on all motor fuel sold, distributed, or used in the State. The rate of tax consists of a flat rate of 17.5¢ per gallon plus a variable wholesale component equal to the greater of 7% of the average wholesale price of motor fuel during the preceding six-month base period or 3.5¢ per gallon. The current total rate is 29.9¢ per gallon for the period January 1, 2006, through June 30, 2006.

Under G.S. 105-449.125, ½ ¢ per gallon of the excise tax is allocated to the following environmental funds in the fraction indicated:

Commercial Leaking Petroleum Storage Tank Cleanup Fund	19/32
Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund	3/32
Water and Air Quality Account	5/16

Of the remaining excise tax revenue, 75% goes to the Highway Fund and 25% goes to the Highway Trust Fund.

BILL ANALYSIS: House Bill 2384 imposes a cap on the variable wholesale component of the motor fuel excise tax rate at its current rate of 12.4¢ per gallon. This cap will sunset July 1, 2008.

HB 2384 also provides for a reserve from the 2006-2007 General Fund availability in the following amounts:

Reserve for Highway Fund Hold Harmless	($17,600,000)
Reserve for Highway Trust Fund Hold Harmless	($5,700,000)

These reserved funds will only be transferred for the purpose of holding harmless the Highway Fund and the Highway Trust Fund in the event that the variable wholesale component of the excise tax would exceed 12.4¢ per gallon if it were not capped. The transfer applies to the 2006-2007 fiscal year, but it is the intent of the General Assembly that reserve provisions and hold-harmless provisions apply to the 2007-2008 fiscal year.

The remainder of House Bill 2384 provides that when determining whether a person has charged an excessive price during a state of disaster, one must consider whether the seller was pricing above market prices when no alternative seller was available. A determination of price gouging is an unfair method of competition or deceptive trade practice.

EFFECTIVE DATE: This act is effective July 1, 2006. The cap on the wholesale component is repealed July 1, 2008.

BACKGROUND:

Prior rates:

January 1, 2000-June 30, 2000	22.0¢ per gallon
July 1, 2000-December 31, 2000	23.1¢ per gallon
January 1, 2001-June 30, 2001	24.3¢ per gallon
July 1, 2001-December 31, 2001	24.1¢ per gallon
January 1, 2002-June 30, 2002	24.2¢ per gallon
July 1, 2002-December 31, 2002	22.1¢ per gallon
January 1, 2003-June 30, 2003	23.4¢ per gallon
July 1, 2003-December 31, 2003	24.2¢ per gallon
January 1, 2004-June 30, 2004	24.3¢ per gallon
July 1, 2004-December 31, 2004	24.6¢ per gallon
January 1, 2005-June 30, 2005	26.6¢ per gallon
July 1, 2005-December 31, 2005	27.1¢ per gallon.

H2384e1-SMLA-CSLA

GENERAL ASSEMBLY OF NORTH CAROLINA
Session 2005

FISCAL ANALYSIS MEMORANDUM

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

DATE: June 8, 2006

TO: House Finance Committee

FROM: Bob Weiss
Fiscal Research Division

RE: PCS H2384-CSLA-38 Cap Variable Rate of the Gasoline Excise Tax

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES:					
General Fund	($23,300,000) Maximum				
Highway Fund/Highway Trust Fund		$0 See Assumptions and Methodology			
EXPENDITURES:					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: General Fund, Highway Fund and Highway Trust Fund

EFFECTIVE DATE: July 1, 2006

BILL SUMMARY: Section 1 caps the variable component of the motor fuels tax rate at 12.4 cents per gallon.
Section 2 adds language to the consideration of the prohibition of excessive pricing during states of disaster and requires that the Attorney General maintain the confidentiality of certain evidence, testimony, etc.

Section 3 changes the definition of Disaster.
Section 4 reserves a total of $23.3 million of General Fund availability in 2006-2007 to hold the Highway Fund and Highway Trust Fund harmless, if necessary, from loss in revenues resulting from the cap.
Section 5 provides that funds reserved in Section 4 be transferred on a monthly basis in fiscal year 2006-2007 to the Highway Fund and the Highway Trust Fund if necessary to compensate these funds for monies not received because the cap is lower than the tax rate that would have been charged without the cap. The transfer is not to exceed $23.3 million. Section 5 also states legislative intent that the hold harmless provisions of Sections 4 and 5 be continued in the 2007-2008 fiscal year.
Section 6 sets the effective date for the bill as July 1, 2006 and repeals the cap as of July 1, 2008.

ASSUMPTIONS AND METHODOLOGY:
The bill caps the variable wholesale component of the motor fuels tax at the current rate of 12.4 cents per gallon for two years and provides funds, up to $23.3 million as necessary, from the General Fund to hold the Highway Fund and Highway Trust Fund harmless for the first year.
The Office of State Budget and Management has forecast the variable tax rate for the next five years, as shown in the table. The table also indicates that the forecast rate would be approximately 0.4 cents per gallon above the cap in the first year, leading to a loss of approximately $23.3 million. In FY 2007-2008 the forecasted rate is above the cap, so no loss is shown.

	Variable Rate Forecast by Budget Office (cents/gallon)	Variable Rate Cap in HB 2384 (cents/gallon)	Amount Greater than Cap (cents/gallon)	Fiscal Impact at approximately $54 million in revenues per penny of tax (million $)
FY06-07	12.8	12.4	0.4	($23.3)
FY07-08	12.3	12.4	0.0	$0.0
FY08-09	12.1			
FY09-10	11.7			
FY10-11	11.1			

While OSBM has prepared a mainstream forecast of motor fuel prices and the calculated taxes the future of the motor fuels tax is actually highly uncertain. As a result the fiscal impact in the second year could be significant if actual prices and taxes exceed the forecast.

Section 2 adds language to G.S. 75-38 Prohibit excessive pricing during states of disaster. It is assumed that the proposed amendment to G.S. 75-38 does not constitute a change in the criminal penalty for violation of the law (punishable under G.S. 75-1.1). It is presumed that the offense of selling, renting, or offering to sell or rent something at an excessive price during a state of disaster remains the same and that the amendment gives the court additional evidence to consider, but is not a new element of the offense.

SOURCES OF DATA: Office of State Budget and Management

TECHNICAL CONSIDERATIONS: None

North Carolina General Assembly

House Committee on Finance

Minutes

~

June 13, 2006 – 8:30 a.m.

The House Committee on Finance met on Tuesday, June 13, 2006 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Gibson, Howard, Luebke, McComas and Wainwright; Vice-Chairs Daughtridge, Hill, Ross, Weiss, and Womble; and Representatives B. Allen, Blackwood, Blust, Bordsen, Capps, Carney, Dockham, England, Faison, Fisher, Folwell, Glazier, Goforth, Hackney, Harrell, Holliman, Jones, Lewis, Lucas, McGee, Rayfield, Underhill, Vinson, Walend, and Wiley. Also present were Sergeant-at-Arms Mark Cone, Fred Hines, Marvin Lee, and Dusty Rhodes. Staff persons present included Cindy Avrette, Rodney Bizzell, David Crotts, Brenna Erford, Canaan Huie, Linda Millsaps, and Martha Walston. The Agenda and Visitor Registration Sheets are attached and incorporated into these minutes as **attachments 1 and 2.**

Chairman McComas called the meeting to order at 8:33 am and recognized the six (6) pages present: (1) Taylor Alton of Currituck County, sponsored by Representative Owens; (2) Anna Heavner of Gaston County, sponsored by Representative Rayfield; (3) Luke Kinsey of Union County, sponsored by Representative Harrison; (4) Natalie Moss of Gaston County, sponsored by Representative Current; (5) Sara Robinson of Guilford County, sponsored by Representative Blust; and (6) Seth Avrette of Harnett County, sponsored by Speaker Black.

Chairman McComas then referred the following bills to the House Finance Subcommittee on Occupancy Tax:

- **SB 1431 – BURGAW OCCUPANCY TAX – Senator Soles**
- **SB 1506 – ADDITIONAL ST. PAULS OCCUPANCY TAX – Senator Weinstein**

The first matter before the Committee was the continued discussion of **HB 2433 – FINANCE LAW CHANGES -1** (see **attachment 3**) from the Thursday, June 8, 2006 Committee meeting. Representative Goforth was recognized and moved for the adoption of the Proposed Committee Substitute (PCS) for the Committee's consideration. The motion carried. Representative Gibson, in the absence of the bill sponsor Representative Luebke, was then recognized to explain the PCS. Representative Gibson deferred to staff who explained that the PCS incorporated the amendments adopted by the Committee during the June 8th meeting and also changed the effective date of the public water system permit fees set out in G.S. 130A-328 from July 1, 2006 to January 1, 2007. Representative Howard was recognized following this explanation and stated her appreciation to the interested parties on the bill, including the Department of Environment and Natural Resources, the League of Municipalities, and the County Commissioners Association, for their cooperation in extending the effective date of the public water system permit

fee increases until January 1, 2007. She also stated that since the Committee's last meeting she had learned that these fees had been requested by the affected parties and, as a result, she had no further objection to the bill. She then moved for a favorable report to the PCS for HB 2433, with an unfavorable report as to the original bill. Seeing no discussion, Chairman McComas then called the motion to a vote and it carried without objection.

The next and final matter considered by the Committee was the continued discussion of **HB 2047 – VIDEO SERVICE COMPETITION ACT** (see **attachment 4**) from the Committee's Tuesday, June 6, 2006 meeting. Chairman McComas reminded the members that the PCS for HB 2047 was already before the Committee for the purposes of discussion. Being a primary sponsor of the bill, Chairman McComas then relinquished the chair to Chairwoman Howard.

Chairwoman Howard then recognized Representative Wainwright to once again explained the bill. Representative Wainwright explained that the bill would provide for increased competition in the cable television industry and stated his desire to be recognized for comment on any amendments offered by the Committee.

Chairwoman Howard then recognized Representative McComas to explain a perfecting amendment to Representative Bordsen's amendment offered during the Committee's last hearing of the bill on June 6th (see **attachment 5** for the McComas perfecting amendment and **attachment 6** for the Bordsen amendment). Representative McComas explained that his perfecting amendment provided for parity between the telecom and cable companies with regard to the set aside requirement in Representative Bordsen's amendment. He then moved for the adoption of his perfecting amendment. Seeing no further discussion on the McComas perfecting amendment, Chairwoman Howard then called the motion to a vote, and the perfecting amendment was adopted. Representative Bordsen was then recognized to further explain her amendment (again, see **attachment 6**). She noted that the amendment provides for a five percent set aside of bandwidth for the public interest and stated that the amendment would ensure that PEG channels remain an integral part of the industry as technology continues to advance. She then moved for the adoption of her amendment, as perfected. Representative Wainwright was recognized by the Chair following this explanation and stated that the Bordsen amendment would actually deter the expansion of future networks because it does not allow for free and open competition. Seeing no further discussion on the amendment, Chairwoman Howard then called the Bordsen amendment, as perfected, to a vote and the amendment failed.

Representative Weiss was recognized next and sent forth an amendment (see **attachment 7**). She explained that the intent of this amendment was to tighten the anti-discrimination provisions in the bill, and she then moved for the adoption of the amendment. Chairwoman Howard then recognized Representative Wainwright to comment on the amendment. He stated that the amendment was unnecessary and that the bill as written provided that the Attorney General's office aggressively investigate consumer complaints when filed. Representative Ross was recognized and stated her support for the amendment noting that the Attorney General's office, without additional resources, which were not provided in the bill, could not adequately investigate the thousands of consumer complaints filed across the state each year. Representative Faison was recognized next and questioned the language contained on page 1, lines 13-16 of the amendment. He stated that this language gave too much authority to the Attorney General's Office, allowing it to act in the capacity of a Court. Representative Glazier concurred with Representative Faison's concern and sent forth a perfecting amendment (see **attachment 8**) deleting lines 13-16 on page one of the amendment. Seeing no discussion on the perfecting amendment, Chairwoman Howard called the Glazier perfecting amendment to a vote, and it was adopted. Seeing no further discussion on

the Weiss Amendment, Chairwoman Howard then called this amendment, as perfected, to a vote. The amendment failed.

Chairwoman Howard then recognized Representative Holliman to send forth an amendment (see **attachment 9**). Representative Holliman explained that the amendment made a number of clarifying changes to the bill as requested by different interested parties. Following this explanation, Representative Glazier was recognized and questioned the language of the amendment on Page 3, lines 1-6. He stated his concern that the language weakened the consumer protections provided in the bill. Cindy Avrette from Research was recognized to respond and stated that the language had been requested by the Attorney General's Office. Josh Stein, Director of the Consumer Protection Division in the Attorney General's Office, was recognized and stated that the language was intended to simply clarify the enforcement authority of his office under the bill. Seeing no further discussion on the Holliman amendment, Chairwoman Howard then called the amendment to a vote, and it was adopted.

Representative Weiss was then recognized to send forth another amendment (see **attachment 10**). She explained that the amendment added a new section to the bill requiring that the Attorney General's Office report to the Revenue Laws Study Committee on or before April 1st of each year with information regarding the number, types, and means of resolution of consumer complaints. Representative Wainwright was recognized to comment on the amendment and inquired of the Attorney General's Office position on the amendment. Josh Stein, Director of the Consumer Protection Division of the Attorney General's Office, was again recognized and stated that his office was in support of the amendment in that it would monitor the customer complaint investigations conducted by the Attorney General's Office, which would help to determine if additional staff and resources would be required by his office. As there was no further discussion, Chairwoman Howard then called the amendment to a vote and it was adopted.

Chairwoman Howard then again recognized Representative Weiss to send forth another amendment (see **attachment 11**). Representative Weiss explained that the amendment would insert a "build-out" requirement in the bill, wherein cable companies would be required to provide service to 65 percent of their service area within 7 years of obtaining a state-issued franchise. She stated that the amendment was needed in order to ensure that opportunities for cable television services would be afforded to the rural and low-income populations in the state. She then moved for the adoption of the amendment. Representative Wainwright was then recognized and voiced his opposition to the amendment. He stated that the competition created by the bill would ensure the opportunities for service over which Representative Weiss expressed concern. However, Representative Weiss further stated that without the amendment, there could be no assurance of access to these services for the rural and low income populations. She then called for the ayes and nays on the amendment.

Representative Bordsen was then recognized and asked if additional infrastructure was necessary in order for telephone lines to be able to adequately deliver cable service to subscribers. Stan Pace with Verizon was recognized to respond and stated that his company did anticipate the need for additional infrastructure in order to provide adequate cable service across telecom lines. He also noted, however, that other telecom companies, such as AT&T, planned to offer telecom cable services with less additional infrastructural needs.

Representative Womble was recognized next to comment on the amendment and reiterated Representative Weiss' concerns that there is no provision in the bill as written to require companies to provide access to the rural and low income areas of the state. He further stated that the amendment is in fact not strong enough in its attempt to protect consumers. Representative Ross

then asked to hear the position of the North Carolina League of Municipalities (NCLM). Ellis Hankins, Executive Director of the NCLM, was present and testified that his organization supported the Weiss amendment. Representative Daughtridge was recognized next and opposed the amendment stating that it placed unnecessary requirements on private businesses who are trying to effectively compete and still produce a profit. Representatives Glazier and Luebke then reiterated Representatives Weiss' and Womble's concerns that the amendment provides consumer protection by ensuring the availability of service.

Seeing no further discussion on the amendment and the ayes and nays having been requested, Chairwoman Howard then directed the Clerk to call the roll (see **attachment 12**). By a vote of 12 ayes and 22 nays, the amendment failed. (Note: The Chair excused Representative Gibson from voting pursuant to House Rule 24.1(a).)

Chairwoman Howard then recognized Representative Fisher to send forth amendment (see **attachment 13**). Representative Fisher explained that the amendment provided for "community reinvestment" by requiring cable providers to pay a 1 percent privilege tax to fund PEG channels across the state. She then moved for the adoption of the amendment. Representative Wainwright was recognized and spoke in opposition to the amendment. He stated his support for the quality services that PEG channels provide across North Carolina but stated that an additional tax placed on the consumer was not the avenue that the Committee or the General Assembly should pursue. Seeing no further discussion, Chairwoman Howard called the amendment to a vote and it failed.

Representative Luebke was then recognized to offer the final amendment on the bill (see **attachment 14**). He explained that the amendment simply moved up the time that a report must be issued to the Revenue Laws Study Committee on the directives of the bill from 2009 to 2008. As there was no discussion, Chairwoman Howard called the amendment to a vote, and it was adopted.

Chairwoman Howard then recognized the bill sponsors for final comments on the bill. Representative McComas stated that while the bill was not a perfect product, it was a great start. Representative Luebke expressed his disappointment that several of the amendments offered on the bill were not adopted. Representative Carney stated that the bill is about competition and opening the market to allow technology to prosper while holding harmless the local governments with regard to revenue. Finally, Representative Wainwright thanked the Committee for its thorough review of the bill. He also extended his thanks to the Committee staff for their steadfast commitment in preparation for the bill and the many amendments offered. Following this, Representative Wainwright moved that the PCS for HB 2047, incorporating the adopted amendments, be given a favorable report, with an unfavorable report as to the original bill. Seeing no discussion, Chairwoman Howard called the motion to a vote, and it carried by a majority.

Having no further business before the Committee, Chairwoman Howard then adjourned the meeting at 10:06 am.

Respectfully submitted,

Representative Julia Howard
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:

1. Agenda
2. Visitor Registration Sheets
3. House Bill 2433 (and related materials)
4. House Bill 2047 (and related materials)
5. McComas Perfecting Amendment to the Pending Bordsen Amendment on HB 2047 – **ADOPTED**
6. Bordsen Amendment on House Bill 2047 – **FAILED**
7. First Weiss Amendment on House Bill 2047 – **FAILED**
8. Glazier Perfecting Amendment to the First Weiss Amendment on HB 2047 – **ADOPTED**
9. Holliman Amendment on HB 2047 – **ADOPTED**
10. Second Weiss Amendment on HB 2047 – **ADOPTED**
11. Third Weiss Amendment on HB 2047 – **FAILED**
12. Roll Call Vote on Third Weiss Amendment on HB 2047
13. Fisher Amendment on HB 2047 – **FAILED**
14. Luebke Amendment on HB 2047 – **ADOPTED**

North Carolina General Assembly

House Committee on Finance

Minutes

~

June 13, 2006 – 8:30 a.m.

The House Committee on Finance met on Tuesday, June 13, 2006 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Gibson, Howard, Luebke, McComas and Wainwright; Vice-Chairs Daughtridge, Hill, Ross, Weiss, and Womble; and Representatives B. Allen, Blackwood, Blust, Bordsen, Capps, Carney, Dockham, England, Faison, Fisher, Folwell, Glazier, Goforth, Hackney, Harrell, Holliman, Jones, Lewis, Lucas, McGee, Rayfield, Underhill, Vinson, Walend, and Wiley. Also present were Sergeant-at-Arms Mark Cone, Fred Hines, Marvin Lee, and Dusty Rhodes. Staff persons present included Cindy Avrette, Rodney Bizzell, David Crotts, Brenna Erford, Canaan Huie, Linda Millsaps, and Martha Walston. The Agenda and Visitor Registration Sheets are attached and incorporated into these minutes as **attachments 1 and 2.**

Chairman McComas called the meeting to order at 8:33 am and recognized the six (6) pages present: (1) Taylor Alton of Currituck County, sponsored by Representative Owens; (2) Anna Heavner of Gaston County, sponsored by Representative Rayfield; (3) Luke Kinsey of Union County, sponsored by Representative Harrison; (4) Natalie Moss of Gaston County, sponsored by Representative Current; (5) Sara Robinson of Guilford County, sponsored by Representative Blust; and (6) Seth Avrette of Harnett County, sponsored by Speaker Black.

Chairman McComas then referred the following bills to the House Finance Subcommittee on Occupancy Tax:

- **SB 1431 – BURGAW OCCUPANCY TAX – Senator Soles**
- **SB 1506 – ADDITIONAL ST. PAULS OCCUPANCY TAX – Senator Weinstein**

The first matter before the Committee was the continued discussion of **HB 2433 – FINANCE LAW CHANGES -1** (see **attachment 3**) from the Thursday, June 8, 2006 Committee meeting. Representative Goforth was recognized and moved for the adoption of the Proposed Committee Substitute (PCS) for the Committee's consideration. The motion carried. Representative Gibson, in the absence of the bill sponsor Representative Luebke, was then recognized to explain the PCS. Representative Gibson deferred to staff who explained that the PCS incorporated the amendments adopted by the Committee during the June 8th meeting and also changed the effective date of the public water system permit fees set out in G.S. 130A-328 from July 1, 2006 to January 1, 2007. Representative Howard was recognized following this explanation and stated her appreciation to the interested parties on the bill, including the Department of Environment and Natural Resources, the League of Municipalities, and the County Commissioners Association, for their cooperation in extending the effective date of the public water system permit

fee increases until January 1, 2007. She also stated that since the Committee's last meeting she had learned that these fees had been requested by the affected parties and, as a result, she had no further objection to the bill. She then moved for a favorable report to the PCS for HB 2433, with an unfavorable report as to the original bill. Seeing no discussion, Chairman McComas then called the motion to a vote and it carried without objection.

The next and final matter considered by the Committee was the continued discussion of **HB 2047 – VIDEO SERVICE COMPETITION ACT** (see **attachment 4**) from the Committee's Tuesday, June 6, 2006 meeting. Chairman McComas reminded the members that the PCS for HB 2047 was already before the Committee for the purposes of discussion. Being a primary sponsor of the bill, Chairman McComas then relinquished the chair to Chairwoman Howard.

Chairwoman Howard then recognized Representative Wainwright to once again explained the bill. Representative Wainwright explained that the bill would provide for increased competition in the cable television industry and stated his desire to be recognized for comment on any amendments offered by the Committee.

Chairwoman Howard then recognized Representative McComas to explain a perfecting amendment to Representative Bordsen's amendment offered during the Committee's last hearing of the bill on June 6th (see **attachment 5** for the McComas perfecting amendment and **attachment 6** for the Bordsen amendment). Representative McComas explained that his perfecting amendment provided for parity between the telecom and cable companies with regard to the set aside requirement in Representative Bordsen's amendment. He then moved for the adoption of his perfecting amendment. Seeing no further discussion on the McComas perfecting amendment, Chairwoman Howard then called the motion to a vote, and the perfecting amendment was adopted. Representative Bordsen was then recognized to further explain her amendment (again, see **attachment 6**). She noted that the amendment provides for a five percent set aside of bandwidth for the public interest and stated that the amendment would ensure that PEG channels remain an integral part of the industry as technology continues to advance. She then moved for the adoption of her amendment, as perfected. Representative Wainwright was recognized by the Chair following this explanation and stated that the Bordsen amendment would actually deter the expansion of future networks because it does not allow for free and open competition. Seeing no further discussion on the amendment, Chairwoman Howard then called the Bordsen amendment, as perfected, to a vote and the amendment failed.

Representative Weiss was recognized next and sent forth an amendment (see **attachment 7**). She explained that the intent of this amendment was to tighten the anti-discrimination provisions in the bill, and she then moved for the adoption of the amendment. Chairwoman Howard then recognized Representative Wainwright to comment on the amendment. He stated that the amendment was unnecessary and that the bill as written provided that the Attorney General's office aggressively investigate consumer complaints when filed. Representative Ross was recognized and stated her support for the amendment noting that the Attorney General's office, without additional resources, which were not provided in the bill, could not adequately investigate the thousands of consumer complaints filed across the state each year. Representative Faison was recognized next and questioned the language contained on page 1, lines 13-16 of the amendment. He stated that this language gave too much authority to the Attorney General's Office, allowing it to act in the capacity of a Court. Representative Glazier concurred with Representative Faison's concern and sent forth a perfecting amendment (see **attachment 8**) deleting lines 13-16 on page one of the amendment. Seeing no discussion on the perfecting amendment, Chairwoman Howard called the Glazier perfecting amendment to a vote, and it was adopted. Seeing no further discussion on

the Weiss Amendment, Chairwoman Howard then called this amendment, as perfected, to a vote. The amendment failed.

Chairwoman Howard then recognized Representative Holliman to send forth an amendment (see **attachment 9**). Representative Holliman explained that the amendment made a number of clarifying changes to the bill as requested by different interested parties. Following this explanation, Representative Glazier was recognized and questioned the language of the amendment on Page 3, lines 1-6. He stated his concern that the language weakened the consumer protections provided in the bill. Cindy Avrette from Research was recognized to respond and stated that the language had been requested by the Attorney General's Office. Josh Stein, Director of the Consumer Protection Division in the Attorney General's Office, was recognized and stated that the language was intended to simply clarify the enforcement authority of his office under the bill. Seeing no further discussion on the Holliman amendment, Chairwoman Howard then called the amendment to a vote, and it was adopted.

Representative Weiss was then recognized to send forth another amendment (see **attachment 10**). She explained that the amendment added a new section to the bill requiring that the Attorney General's Office report to the Revenue Laws Study Committee on or before April 1st of each year with information regarding the number, types, and means of resolution of consumer complaints. Representative Wainwright was recognized to comment on the amendment and inquired of the Attorney General's Office position on the amendment. Josh Stein, Director of the Consumer Protection Division of the Attorney General's Office, was again recognized and stated that his office was in support of the amendment in that it would monitor the customer complaint investigations conducted by the Attorney General's Office, which would help to determine if additional staff and resources would be required by his office. As there was no further discussion, Chairwoman Howard then called the amendment to a vote and it was adopted.

Chairwoman Howard then again recognized Representative Weiss to send forth another amendment (see **attachment 11**). Representative Weiss explained that the amendment would insert a "build-out" requirement in the bill, wherein cable companies would be required to provide service to 65 percent of their service area within 7 years of obtaining a state-issued franchise. She stated that the amendment was needed in order to ensure that opportunities for cable television services would be afforded to the rural and low-income populations in the state. She then moved for the adoption of the amendment. Representative Wainwright was then recognized and voiced his opposition to the amendment. He stated that the competition created by the bill would ensure the opportunities for service over which Representative Weiss expressed concern. However, Representative Weiss further stated that without the amendment, there could be no assurance of access to these services for the rural and low income populations. She then called for the ayes and nays on the amendment.

Representative Bordsen was then recognized and asked if additional infrastructure was necessary in order for telephone lines to be able to adequately deliver cable service to subscribers. Stan Pace with Verizon was recognized to respond and stated that his company did anticipate the need for additional infrastructure in order to provide adequate cable service across telecom lines. He also noted, however, that other telecom companies, such as AT&T, planned to offer telecom cable services with less additional infrastructural needs.

Representative Womble was recognized next to comment on the amendment and reiterated Representative Weiss' concerns that there is no provision in the bill as written to require companies to provide access to the rural and low income areas of the state. He further stated that the amendment is in fact not strong enough in its attempt to protect consumers. Representative Ross

then asked to hear the position of the North Carolina League of Municipalities (NCLM). Ellis Hankins, Executive Director of the NCLM, was present and testified that his organization supported the Weiss amendment. Representative Daughtridge was recognized next and opposed the amendment stating that it placed unnecessary requirements on private businesses who are trying to effectively compete and still produce a profit. Representatives Glazier and Luebke then reiterated Representatives Weiss' and Womble's concerns that the amendment provides consumer protection by ensuring the availability of service.

Seeing no further discussion on the amendment and the ayes and nays having been requested, Chairwoman Howard then directed the Clerk to call the roll (see **attachment 12**). By a vote of 12 ayes and 22 nays, the amendment failed. (Note: The Chair excused Representative Gibson from voting pursuant to House Rule 24.1(a).)

Chairwoman Howard then recognized Representative Fisher to send forth amendment (see **attachment 13**). Representative Fisher explained that the amendment provided for "community reinvestment" by requiring cable providers to pay a 1 percent privilege tax to fund PEG channels across the state. She then moved for the adoption of the amendment. Representative Wainwright was recognized and spoke in opposition to the amendment. He stated his support for the quality services that PEG channels provide across North Carolina but stated that an additional tax placed on the consumer was not the avenue that the Committee or the General Assembly should pursue. Seeing no further discussion, Chairwoman Howard called the amendment to a vote and it failed.

Representative Luebke was then recognized to offer the final amendment on the bill (see **attachment 14**). He explained that the amendment simply moved up the time that a report must be issued to the Revenue Laws Study Committee on the directives of the bill from 2009 to 2008. As there was no discussion, Chairwoman Howard called the amendment to a vote, and it was adopted.

Chairwoman Howard then recognized the bill sponsors for final comments on the bill. Representative McComas stated that while the bill was not a perfect product, it was a great start. Representative Luebke expressed his disappointment that several of the amendments offered on the bill were not adopted. Representative Carney stated that the bill is about competition and opening the market to allow technology to prosper while holding harmless the local governments with regard to revenue. Finally, Representative Wainwright thanked the Committee for its thorough review of the bill. He also extended his thanks to the Committee staff for their steadfast commitment in preparation for the bill and the many amendments offered. Following this, Representative Wainwright moved that the PCS for HB 2047, incorporating the adopted amendments, be given a favorable report, with an unfavorable report as to the original bill. Seeing no discussion, Chairwoman Howard called the motion to a vote, and it carried by a majority.

Having no further business before the Committee, Chairwoman Howard then adjourned the meeting at 10:06 am.

Respectfully submitted,

Representative Julia Howard
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:

1. Agenda
2. Visitor Registration Sheets
3. House Bill 2433 (and related materials)
4. House Bill 2047 (and related materials)
5. McComas Perfecting Amendment to the Pending Bordsen Amendment on HB 2047 – **ADOPTED**
6. Bordsen Amendment on House Bill 2047 – **FAILED**
7. First Weiss Amendment on House Bill 2047 – **FAILED**
8. Glazier Perfecting Amendment to the First Weiss Amendment on HB 2047 – **ADOPTED**
9. Holliman Amendment on HB 2047 – **ADOPTED**
10. Second Weiss Amendment on HB 2047 – **ADOPTED**
11. Third Weiss Amendment on HB 2047 – **FAILED**
12. Roll Call Vote on Third Weiss Amendment on HB 2047
13. Fisher Amendment on HB 2047 – **FAILED**
14. Luebke Amendment on HB 2047 – **ADOPTED**

ATTACHMENT 1

AGENDA

House Finance Committee

Tuesday, June 13, 2006
8:30 a.m.
Room 544 LOB
Chaired by: Rep. McComas

Co-Chairs

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

Call to Order

Introduction of Pages

Bills:

HB 2047 VIDEO SERVICE COMPETITION ACT
Reps. Carney, Luebke, McComas, & Wainwright

HB 2433 FINANCE LAW CHANGES – 1 *Rep. Luebke*

Adjournment

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

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

DAY & DATE: **Tuesday, June 13, 2006**

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

LOCATION: **Room 544, LOB**

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

HB 2047 – VIDEO SERVICE COMPETITION ACT – Reps. Carney, Luebke, McComas, & Wainwright

HB 2433 – FINANCE LAW CHANGES - 1 – Rep. Luebke

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

I hereby certify this notice was filed by the committee clerk at the following offices at **11:30 am** on **June 8, 2006**:

X Principal Clerk
X Reading Clerk - House Chamber

Jason A. Cannon (Committee Clerk)

ATTACHMENT 2

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 13, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Byron Nelson	Nelson & Associates, Winston-Salem
B Wilson	AARP
Clifton Metcalf	Bell South
Anna Mitchell	NC DOR
Andy Sabol	a.c DOR
Connie Ruy	DENR - DEH
Paul Meyer	NCAFC
Johnny Griffin	Wilmington Regional Film Comm.
Bill Vassar	EVE/Screen Gems
Cathy Hardy	DENR
BILL ARNOLD	NORTH CAROLINA FILM OFFICE

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 13, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
David Barnes	Poyner + Spruill
Chris Rodda	Poyner & Spruill
Pat Stith	NTO
Lemuel Hinton	NCUC Staff
Andy Romeo	NCLM
Bridget Paschal	Utilities Commission - Staff
DK McLaughlin	Time Warner Cable
David Auger	Time Warner Cable
Boyd Cauble	City of Charlotte
John McMillan	NFIB
Sutherland Stacy	Electricities of NC

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 13, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jessica Miles	DENR Public Water Supply Section
John McFadyen	DENR/DEH/Public Water Supply
Mike Kelly	DEH / DENR
Anthony Allen	North Carolina Assoc County Commissioners
Daniel Coldoro	NCACC
Jim Blackburn	N.C. Association of County Commissioners
Terry L. Pierce	Div Env Hlth, DENR
Michelle Judkins	intern Rep Jeffus
Roy Loflin	Freedom Works
Kathy Hartkopf	Freedom Works
CARLOS E. SANCHEZ	BELLSOUTH

VISITOR REGISTRATION SHEET

Horse Finance — Name of Committee

June 13, 2006 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bob Gillam	Public Staff - NCUC
Blair Carr	City of Greensboro
TONIA Brown-Bland	Greensboro
Linda Miles	City of Greensboro
Cally Liggins	GOOS office
Cam Cree	BPMHC
Rick Zechini	NCAR
Veronica Carrington	Rep. Wainwright Intern
Todd Lanham	BellSouth
LaVoy Spooner	BellSouth
Ruth Coyle	Kilpatrick Stockton
Kathy Hawkins	Progress Energy
Zeb Alley	Allen + Assoc.

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 13, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Doris Weaver	Communications Workers of America
Robert Wilson	S.O.S
Haley Montgomery	SOS
Robin Staudt	Orange County Freedom Works
Joel Brown	NCSOS
John McKinney	BellSouth
Chuck Greene	BellSouth

VISITOR REGISTRATION SHEET

House Finance — June 13, 2006

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Corrine Wilson	SSI
Barbara Fraser	TWC
Paul Pulley	NCATL
Mary Monteleone	Poyner & Spruill
Jennifer Haigwood	NCDA
Dean Plunkett	NCBWWA
Leslie Bevacqua Cornn	Capitol Assoc
Jeff Carey	RNA, PA

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 13, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Chris Johnston	The Peoples Channel Chapel Hill
Wally Bowen	N.C. Coalition of Community Media Centers
ELLIS HANKINS	NCDOT
Wayne Goodwin	DOT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 2433
PROPOSED COMMITTEE SUBSTITUTE H2433-CSLAx-37 [v.15]

6/12/2006 5:31:33 PM

Short Title: 2006 Fee Bill. (Public)

Sponsors:

Referred to:

May 24, 2006

A BILL TO BE ENTITLED

AN ACT TO SET THE PUBLIC UTILITIES REGULATORY FEE AND THE INSURANCE REGULATORY CHARGE, TO AUTHORIZE A PRIVATE-WELL WATER TESTING FEE, TO CLARIFY FEES FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICE FACILITIES, TO MAKE A TECHNICAL CORRECTION TO LICENSURE FEE CAP FOR REVIEW OF HEALTH CARE FACILITY CONSTRUCTION PROJECTS, TO REPEAL THE FEE FOR MINE SAFETY EDUCATION/TRAINING PROGRAMS, TO INCREASE THE PUBLIC WATER SYSTEMS ANNUAL OPERATING PERMIT FEES, AND TO IMPOSE PUBLIC WATER SYSTEM PLAN REVIEW FEES.

The General Assembly of North Carolina enacts:

PART I. SET RATES FOR INSURANCE REGULATORY CHARGE AND PUBLIC UTILITIES FEES

INSURANCE REGULATORY CHARGE

SECTION 1.1.(a) The percentage rate to be used in calculating the insurance regulatory charge under G.S. 58-6-25 is five and one-half percent (5.5%) for the 2006 calendar year.

SECTION 1.1.(b) This section becomes effective July 1, 2006.

REGULATORY FEE FOR UTILITIES COMMISSION

SECTION 1.2.(a) The percentage rate to be used in calculating the public utility fee under G.S. 62-302(b)(2) is twelve-hundredths of one percent (0.12%) for each public utility's North Carolina jurisdictional revenues earned during each quarter that begins on or after July 1, 2006.

SECTION 1.2.(b). The electric membership corporation regulatory fee imposed under G.S. 62-302(b1) for the 2006-2007 fiscal year is two hundred thousand dollars ($200,000).

SECTION 1.3.(c). This section becomes effective July 1, 2006.

PART II. HEALTH AND HUMAN SERVICES FEES

PRIVATE WELL-WATER TESTING FEE

SECTION 2.1.(a) G.S. 130A-5 is amended by adding the following new subdivision to read:

"**§ 130A-5. Duties of the Secretary.**

The Secretary shall have the authority:

...

"(16) To charge a fee of up to fifty-five dollars ($55.00) for analyzing private well-water samples sent to the State Laboratory of Public Health by local health departments. The fee shall be imposed only for analyzing samples from newly constructed wells. The fee shall be computed annually by the Director of the State Laboratory of Public Health by analyzing the previous year's testing at the State Laboratory of Public Health, and applying the amount of the total cost of the private well-water testing , minus State appropriations that support this effort. The fee includes the charge for the private well-water panel test kit."

SECTION 2.1.(b) The Department of Health and Human Services, Division of Public Health, shall use funds available for the 2006-2007 fiscal year to pay for positions for the private well water safety program authorized in the Current Operations and Capital Improvements Appropriations Act of 2006. Funds realized from fees collected during the 2006-2007 fiscal year shall be used to replace available funds authorized under this subsection and allocated for positions authorized for the private well water safety program for the 2006-2007 fiscal year.

SECTION 2.1.(c) This section becomes effective July 1, 2006.

CLARIFICATION OF FEES FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICE FACILITIES

SECTION 2.2.(a) G.S. 122C-23(h) reads as rewritten:

"(h) The Department shall charge facilities licensed under this Chapter ~~that have licensed beds~~ a nonrefundable annual base license fee plus a nonrefundable annual per-bed fee as follows:

Type of Facility	Number of Beds	Base Fee	Per-Bed Fee
Facilities (non ICF/MR):	0 beds	$175.00	$0
~~Facilities (non-ICF/MR):~~			
	~~6 of fewer~~		
	1 to 6 beds	$250.00	$0
	More than 6 beds	$350.00	$12.50

ICF/MR Only:	~~6 or fewer~~		
	1 to 6 beds	$650.00	$0
	More than 6 beds	$650.00	$12.50"

SECTION 2.2.(b) This section becomes effective July 1, 2006.

TECHNICAL CORRECTION TO LICENSURE FEE LIMITS

SECTION 2.3.(a) G.S. 131E-267 reads as rewritten:

"**§ 131E-267. Fees for departmental review of health care facility construction projects.**

The Department of Health and Human Services shall charge a fee for the review of each health care facility construction project to ensure that project plans and construction are in compliance with State law. The fee shall be charged on a one-time, per-project basis, as follows, and shall not exceed ~~twelve thousand five hundred dollars ($12,500)~~twenty-five thousand dollars ($25,000) for any single project:

Institutional Project	**Project Fee**
Hospitals	$ 300.00 plus $0.20/square foot of project space
Nursing Homes	$ 250.00 plus $0.16/square foot of project space
Ambulatory Surgical Facility	$ 200.00 plus $0.16/square foot of project space
Psychiatric Hospital	$ 200.00 plus $0.16/square foot of project space
Adult Care Home	
7 or more beds	$ 175.00 plus $0.10/square foot of project space

Residential Project	**Project Fee**
Family Care Homes	$ 175.00 flat fee
ICF/MR Group Homes	$ 275.00 flat fee
Group Homes: 1-3 beds	$ 100.00 flat fee
Group Homes: 4-6 beds	$ 175.00 flat fee
Group Homes: 7-9 beds	$ 225.00 flat fee
Other residential:	
More than 9 beds	$ 225.00 plus $0.075/square foot of project space."

SECTION 2.3.(b) This section becomes effective July 1, 2006.

PART III. NATURAL AND ECONOMIC RESOURCES FEES

REPEAL FEE FOR MINE SAFETY EDUCATION/TRAINING PROGRAMS

SECTION 3.1.(a) G.S. 74-24.16(d) is repealed.

SECTION 3.1.(b) This section becomes effective July 1, 2006.

INCREASE CERTAIN PUBLIC WATER SYSTEMS ANNUAL OPERATING PERMIT FEES/IMPOSE FEES FOR REVIEW OF ENGINEERING PLANS AND SPECIFICATIONS FOR THE CONSTRUCTION OR ALTERATION OF PUBLIC WATER SYSTEMS.

SECTION 3.2.(a) G.S. 130A-328 reads as rewritten:

"§ 130A-328. ~~Community~~ Public water system operating permit and permit fee.

(a) No person shall operate a community or non transient non-community water system who has not been issued an operating permit by the Department. A community or non transient non-community water system operating permit shall be valid from January 1 through December 31 of each year unless suspended or revoked by the Department for cause. The Commission shall adopt rules concerning permit issuance and renewal and permit suspension and revocation. The annual fees in subsection (b) shall be prorated on a monthly basis for permits obtained after January 1 of each year.

(b) The following fees are imposed for the issuance or renewal of a permit to operate a community or non transient non-community water system; the fees are based on the number of persons served by the system:

~~Number of Persons Served~~	Fee
~~100 or fewer~~	~~$150~~
~~More than 100 but no more than 500~~	~~$175~~
~~More than 500 but no more than 3300~~	~~$300~~
~~More than 3300 but no more than 5000~~	~~$450~~
~~More than 5000 but no more than 10,000~~	~~$550~~
~~More than 10,000 but no more than 50,000~~	~~$650~~
~~More than 50,000~~	~~$850~~
Non Community Water Systems:	
Base Fee:	
Non transient non-community	$150
Community Water Systems:	
Number of Persons Served	
50 or fewer	$255
More than 50 but no more than 100	$270
More than 100 but no more than 200	$330
More than 200 but no more than 300	$350
More than 300 but no more than 400	$385
More than 400 but no more than 500	$420
More than 500 but no more than 750	$780
More than 750 but no more than 1000	$810
More than 1000 but no more than 2000	$840
More than 2000 but no more than 3000	$870
More than 3000 but no more than 4000	$1350
More than 4000 but no more than 5000	$1460
More than 5000 but no more than 7500	$1925
More than 7500 but no more than 10,000	$2065
More than 10,000 but no more than 25,000	$2600
More than 25,000 but no more than 50,000	$2925
More than 50,000 but no more than 75,000	$4250
More than 75,000 but no more than 100,000	$4675
More than 100,000 but no more than 250,000	$5100

More than 250,000 but no more than 500,000	$5525
More than 500,000	$5950

(c) The following fees are imposed for the review of plans, specifications, and other information submitted to the Department for approval of construction or alteration of a public water system. The fees are based on the type of constructions or alteration proposed:

Distribution system:	Fee
Construction of water lines, less than 5000 linear feet	$150
Construction of water lines, 5000 linear feet or more	$200
Other construction or alteration to a distribution system	$75

Ground water system:	
Construction of a new ground water system or adding a new well	$200
Alteration to an existing ground water system	$100

Surface Water system:	
Construction of a new surface water treatment facility	$250
Alteration to an existing surface water treatment facility	$150
Water System Management Plan review	$75
Miscellaneous changes or maintenance not covered above	$50

(d) The Department may charge an administrative fee of up to one hundred fifty dollars ($150.00) for failure to pay the permit fee by January 31 of each year.

(e) All fees collected under this section shall be applied to the costs of administering and enforcing this Article."

SECTION 3.2.(b) The Department of Environment and Natural Resources may create a schedule for phasing in the new fees added to G.S. 130A-328, as amended by subsection (a) of this section, over multiple operating permit cycles.

SECTION 3.2.(c) This section becomes effective January 1, 2007.

EFFECTIVE DATE

SECTION 4.1. Except as otherwise provided, this act becomes effective July 1, 2006.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 2433

Short Title:	Finance Law Changes - 1.	(Public)
Sponsors:	Representative Luebke.	
Referred to:	Finance.	

May 24, 2006

A BILL TO BE ENTITLED

AN ACT TO SUNSET THE INCREASE IN THE STATE SALES AND USE TAX RATE EARLY.

The General Assembly of North Carolina enacts:

SECTION 1. Section 34.13(c) of S.L. 2001-424, as amended by Section 38.1 of S.L. 2003-284, Section 9.1 of S.L. 2005-144, and Section 33.1 of S.L. 2005-276, reads as rewritten:

"**SECTION 34.13.(c)** This section becomes effective October 16, 2001, and applies to sales made on or after that date. This section is repealed effective for sales made on or after ~~July~~ June 1, 2007. This section does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this section before the effective date of its amendment or repeal; nor does it affect the right to any refund or credit of a tax that accrued under the amended or repealed statute before the effective date of its amendment or repeal."

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

HOUSE BILL 2433: 2006 Fee Bill

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 12, 2006
Introduced by:	Rep. Luebke	**Summary by:**	Martha Walston
Version:	PCS to First Edition H2433-CSLAx-37		Committee Counsel

SUMMARY: The proposed committee substitute for House Bill 2433 does the following:

- ***It sets the insurance regulatory charge (5.5%), the public utility regulatory fee (0.12%), and the fee for electric membership corporations ($200,000) at the same rates as last year.***
- ***It authorizes the Secretary of the Department of Health and Human Services to charge a fee of up to $55 for private well-water samples sent to the State Laboratory of Public Health by local health departments. It gives the Department authority to use funds available for the 2006-2007 fiscal year to pay for positions for the private well water safety program authorized in the 2006 budget and directs that fees collected during the 2006-2007 fiscal year be used to replace available funds allocated for this purpose.***
- ***It establishes a separate annual licensure fee of $175 for non-ICF/MR facilities with zero beds.***
- ***It makes a technical correction to the cap on the licensure fee charged by the Department of Health and Human Services for its review of a health care facility construction project.***
- ***It repeals the $50 fee for mine safety education and training program.***
- ***It increases certain public water system operating fees; imposes a new operating permit fee on non transient non-community water systems; and imposes fees for the review of plans, specifications, and other information submitted to the Department of Environment and Natural Resources for approval of construction or alteration of a public water system.***

BILL ANALYSIS:

PART I. INSURANCE REGULATORY CHARGE AND PUBLIC UTILITIES FEES

Section 1.1 of the bill retains the current rate for the insurance regulatory fee of 5.5%. The insurance regulatory charge was first enacted in 1991 to defray the State's cost of regulating the insurance industry. The charge is a percentage of each insurance company's gross premiums tax liability.

Section 1.2 of the bill retains the current rate for the public utility regulatory fee of 0.12% for each public utility's jurisdictional revenues. The rate has remained the same for the past three years. The rate for this fee must be set each year by the General Assembly. The utility regulatory fee is a tax that was first imposed in 1989. The proceeds of the fee are credited to the Utilities Commission and Public Staff Fund and used to defray the State's cost in regulating public utilities.[1] The regulatory fee is imposed on all utilities that are

[1] In addition to funding the State's cost in regulating public utilities, the money in the Utilities Commission and Public Staff Fund is currently used to finance the work of the Study Commission on the Future of Electric Service in North Carolina. The General Assembly established the Commission in 1997 to examine the cost, adequacy, availability, and pricing of electric service in North Carolina to determine whether legislation is necessary to assure an adequate and reliable source of electricity and economical, fair, and equitable rates for all consumers of electricity in North Carolina. Section 14.10 of S.L. 2000-67, the Current Operations and

subject to regulation by the North Carolina Utilities Commission. The fee is a percentage of the utility's North Carolina jurisdictional revenues. In general, jurisdictional revenue is derived from providing utility service in North Carolina.

Section 1.2 of the bill also sets at $200,000 for the 2006-2007 fiscal year the annual public utility regulatory fee imposed on electric membership corporations whose principal purpose is to furnish or cause to be furnished bulk electric supplies at wholesale. The new rate is the same as the rate in effect for the preceding five fiscal years. The proceeds of the fee are credited to the Utilities Commission and Public Staff Fund and used to defray the State's cost in regulating electric membership corporations.[2]

PART II. HEALTH AND HUMAN SERVICES FEES

Private Well-Water Testing Fee Section. 2.1 gives the Secretary of the Department of Health and Human Services the authority to charge a fee of up to $55 for analyzing private well-water samples from newly constructed wells when the samples are sent to the State Laboratory of Public Health by local health departments. The fee shall be computed annually by the Director of the State Laboratory based on the previous year's testing, the total cost of the testing, and any State appropriations available. This section also gives the Division of Public Health the authority to use funds available for the 2006-2007 fiscal year to pay for positions for the private well water safety program authorized in the 2006 budget, and directs that fees collected during the 2006-2007 fiscal year be used to replace available funds allocated for this purpose.

Clarification of Fees for Mental Health, Developmental Disabilities, and Substance Abuse Service Facilities. Section 2.2 establishes a separate annual licensure fee of $175 for non-ICF/MR facilities with zero beds. According to the Department of Health and Human Services, Division of Facility Services, there are 1,286 non-ICF/MR facilities with zero beds that would be eligible for this fee.

Technical Correction to Licensure Fee Limits. Section 2.3 makes a technical correction to licensure fee limits. In 2005, the General Assembly raised construction and licensure fee amounts, but a licensure cap on the fee that DHHS shall charge for the review of each health care facility construction project was inadvertently not raised at the same time. This section raises that cap from $12,500 to the intended limit of $25,000, for any single project.

PART III NATURAL AND ECONOMIC RESOURCES FEES

Repeal Fee for Mine Safety Education/Training Programs. In 2005, the General Assembly authorized the Commissioner of Labor to establish fees not to exceed $50 for each person participating in mine safety education and training programs provided by the Department of Labor. The Department was

---

Capital Improvements Appropriations Act of 2000, extended the life of the Study Commission and its funding from the Utilities Commission and Public Staff Fund through June 30, 2006.

[2] The 1999 General Assembly enacted S.L. 1999-180, which authorized electric membership corporations to form subsidiary corporations that may provide energy services and products, telecommunications services and products, and water and wastewater collection and treatment. The subsidiary must fully compensate the electric membership corporation for its use of the corporation's personnel, services, equipment, and property. The Utilities Commission is charged with regulating this aspect of the subsidiary's business and, to pay for this regulation, S.L. 1999-180 levied a flat-rate regulatory fee to be paid annually by the North Carolina Electric Membership Corporation. The General Assembly must establish the fee amount each year. The North Carolina Electric Membership Corporation is the only electric membership corporation whose principal purpose is to furnish or cause to be furnished bulk electric supplies at wholesale as provided in G.S. 117-16. It is a "generation and supply cooperative" owned by its members. Its members are all but one of the existing North Carolina electric membership corporations, which are "distribution cooperatives." Thus, the fee imposed on the North Carolina Electric Membership Cooperation will be passed on to its member electric membership corporations

required to take a corresponding General Fund reduction of $270,000. This fee has not generated sufficient revenue to support the Mine Safety Education and Training program. Section 3.1 would repeal this fee.

Increase Certain Public Water Systems Annual Operating Permit Fees/Impose Fees for Review of Engineering Plans and Specifications for the Construction or Alteration of Public Water Systems. Under current law, community water systems are required by statute to pay an annual operating permit fee. The fee is based on the number of persons served by the system. The fees have not been increased since 1992. Section 3.2 would increase the existing community water system operating fees and break them down into smaller service levels, charge a new operating permit fee on non transient non-community water systems, and impose new plan review fees. The Department of Environment and Natural Resources plans to use the additional revenue to hire nineteen new employees responsible for field response, complaint investigation, inspections, technical assistance, rule implementation, training, compliance oversight, lab support, and review and approval of water systems' management plans and capacity development documents.

The North Carolina Drinking Water Act (Article 10 of Chapter 130A) defines "public water system" as a system for the provision to the public of water for human consumption through pipes or other constructed conveyances if the system serves 15 or more service connections or which regularly serves 25 or more individuals. A public water system is either a "community water system" or a "non-community water system". A "community water system" means a public water system that serves 15 or more service connections or that regularly serves at least 25 year-round residents. A "non-community water system" is a public water system that is not a community water system.

EFFECTIVE DATE: Except as otherwise provided, this act becomes effective July 1, 2006

H2433e1-SMLA-CSLA

GENERAL ASSEMBLY OF NORTH CAROLINA
Session 2005

FISCAL ANALYSIS MEMORANDUM

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

DATE: June 7, 2006

TO: Representatives Luebke and Wainwright

FROM: Linda Struyk Millsaps, Susan Morgan, Amna Cameron, Andrea Russo, Kristin Walker. Fiscal Research Division

RE: House Bill 2433 – Set Fees - PCS

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES:					
Insurance Reg. Fee	* See Assumptions and Methodology *				
Utility Reg. Fees	* See Assumptions and Methodology *				
Well Testing Fee	915,530	1,121,285	1,430,000	1,430,000	1,430,000
Mental Health Fees	225,050	225,050	225,050	225,050	225,050
Licensure Fee Limit Correction	* See Assumptions and Methodology *				
Repeal Mine Fee	(Potential Loss of up to $270,000)				
Public Water Permit Fees	1,250,726	1,250,726	1,250,726	1,250,726	1,250,726

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Insurance, Utility Commission, Department of Health and Human Services, Department of Labor, Department of Environment and Natural Resources.

EFFECTIVE DATE: July 1, 2006.

BILL SUMMARY: The bill sets numerous fees for services provided by state agencies. These include setting both the insurance regulatory fee and the utility fee, which must be set by statute each year. In addition, the bill makes changes to fees in the Department of Labor, the Department of Environment and Natural Resources, and the Department of Health and Human Services.

ASSUMPTIONS AND METHODOLOGY:

Part 1: Utilities Regulatory Fee: Each year the General Assembly must, by statute, set the utilities regulatory fee. This fee is used to offset the cost of regulating the industry. The legislation sets the fee at 0.12%, which is the same rate as the previous year. The utilities regulatory fee currently generates approximately $12.6 million annually. In addition, the legislation sets a flat regulatory fee of $200,000 to be charged to the electric membership corporations for their regulation. There are 27 local EMC's across North Carolina. These EMCs contribute to the state North Carolina Electric Membership Corporation (NCEMC), who then pays the fee.

Part 2: Insurance Regulatory Fee: Each year the General Assembly must set the insurance regulatory fee. This fee is charged by the Department to cover the cost of regulating the industry. The legislation sets the insurance regulatory fee at 5.5%. As the chart below indicates, this is the same rate as the previous year.

Calendar Year	Reg Surcharge Rates		Surcharge Collections
2000	7.00%	$	21,091,129
2001	6.50%	$	26,053,987
2002	6.50%	$	24,695,317
2003	5.00%	$	30,671,730
2004	5.00%	$	16,800,921
2005	5.50%	$	21,377,994

The fee is expected to generate $26.0 million.

Part 3: Health and Human Services Fees: This part of the bill makes changes in three areas in the Department of Health and Human Services.

Private-Well Water Testing Fee

Section 2.1 gives the Secretary of the Department of Health and Human Services the authority to charge a fee of up to $55 for analyzing private well-water samples from newly constructed wells when the samples are sent to the State Laboratory of Public Health by local health departments. The fee shall be computed annually by the Director of the State Laboratory based on the previous year's testing, the total cost of the testing, and any State appropriations available. The section also gives the Division of Public Health the authority to use available funds to pay for positions authorized for this purpose for the 2006-2007 fiscal year, and directs that fees collected during the 2006-2007 fiscal year to be used to replace available funds allocated for this purpose.

In State Fiscal Year 2006-2007, the Division of Public Health estimates that 16,646 private well-water samples from newly constructed wells will be submitted. Based on the total estimated cost of testing, it is estimated that the fee will be set at the maximum amount of $55. This would generate $915,530 in revenue ($55 x 16,646). In State Fiscal Year 2007-2008, the Division of Public Health estimates that 20,387 samples will be submitted, generating $1,121,285 in revenue

($55 x 20,387). In future years the number of samples is expected to increase to 26,000, generating approximately $1,430,000 per year in revenue.

Clarification of Fees for Mental Health, Developmental Disabilities, and Substance Abuse Service Facilities
Section 2.2 establishes a separate annual licensure fee of $175 for non-ICF/MR facilities with zero beds. According to the Department of Health and Human Services, Division of Facility Services, there are 1,286 non-ICF/MR facilities with zero beds that would be eligible for this fee. This would generate an estimated $225,050 annually ($175 x 1,286 facilities).

Note: There is a provision in SB1741 (Section 10.29) that would reduce the number of zero-bed facilities that need licensure. If this provision becomes law, then the estimated revenue for this fee would be reduced to $127,750 ($175 x 730 facilities).

Technical Correction to Licensure Fee Limits
This section makes a technical correction to licensure fee limits. In 2005, the General Assembly raised construction and licensure fee amounts, but a licensure cap on the total construction fees charged to any one projected was inadvertently not raised at the same time. This section raises that cap to the intended limit. No fiscal impact is expected.

Part 4: Natural and Economic Resource Fees: This part of the bill makes two fee changes related to Departments covered by the Natural and Economic Resources Committee

Repeal Fee for Mine Safety Education/Training Programs
In 2005-2006, the General Assembly created a $50 fee for mine safety education and training programs and required that the Department of Labor take a corresponding General Fund reduction of $270,000. This fee has not generated sufficient revenue to support the Mine Safety Education and Training program, and this provision would repeal the fee. The Senate Budget Bill 1741 and the proposed House budget include $200,000 (R) in restored General Fund funding; the department will restore the remaining $70,000 from other sources.

Increase Public Water Systems Annual Operating Permit Fees/Impose Certain Annual Operating Permit Fees for Distribution Systems
Community water systems are required by statute to pay an annual operating permit fee. This fee has not been increased since 1992. This fee currently generates approximately $489,144 in revenue. The proposed fee increase would:

1) Increase the existing community water system operating permit fees
2) Charge a new operating permit fee on non-community water systems
3) Charge a new plan review fee

The total estimated *increase* is $1,250,726, with total estimated revenue of $1,739,870. The Department would use the additional revenue to hire nineteen (19.0) new employees responsible for field response, complaint investigation, inspections, technical assistance, rule implementation, training, compliance oversight, lab support, and review and approval of water systems' management plans and capacity development documents.

SOURCES OF DATA: Department of Insurance, Utility Commission, Department of Health and Human Services, Department of Labor, Department of Environment and Natural Resources.

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 2047*
PROPOSED COMMITTEE SUBSTITUTE H2047-PCS30595-RBx-48

Short Title: Video Service Competition Act. (Public)

Sponsors:

Referred to:

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO PROMOTE CONSUMER CHOICE IN VIDEO SERVICE PROVIDERS AND TO ESTABLISH UNIFORM TAXES FOR VIDEO PROGRAMMING SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 66 of the General Statutes is amended by adding a new Article to read:

"Article 42.

"State Franchise for Cable Television Service.

"**§ 66-350. Definitions.**

The following definitions apply in this Article:

(1) Cable service. – Defined in G.S. 105-164.3.

(2) Cable system. – Defined in 47 U.S.C. § 522.

(3) Channel. – A portion of the electromagnetic frequency spectrum that is used in a cable system and is capable of delivering a television channel.

(4) Existing agreement. – A local franchise agreement that was awarded under G.S. 153A-137 or G.S. 160A-319 and meets either of the following:

a. Is in effect on January 1, 2007.

b. Expired before January 1, 2007, and the cable service provider under the agreement provides cable service to subscribers in the franchise area on January 1, 2007.

(5) Pass a household. – Make service available to a household, regardless of whether the household subscribes to the service.

(6) PEG channel. – A public, educational, or governmental access channel provided to a county or city.

(7) Secretary. – The Secretary of State.

"**§ 66-351. State franchising authority.**

(a) Authority. – The Secretary of State is designated the exclusive franchising authority in this State for cable service provided over a cable system. This designation replaces the authorization to counties and cities in former G.S. 153A-137 and G.S. 160A-319 to award a franchise for cable service. This designation is effective January 1, 2007. After this date, a county or city may not award or renew a franchise for cable service.

(b) Award and Scope. – The Secretary is considered to have awarded a franchise to a person who files a notice of franchise under G.S. 66-352. A franchise for cable service authorizes the holder of the franchise to construct and operate a cable system over public rights-of-way within the area to be served. Chapter 160A of the General Statutes governs the regulation of public rights-of-way by a city.

"**§ 66-352. Award of franchise and commencement of service.**

(a) Notice of Franchise. – A person who intends to provide cable service over a cable system in an area must file a notice of franchise with the Secretary before providing the service. A person who files a notice of franchise must pay a fee in the amount set in G.S. 55-1-22 for filing articles of incorporation.

A notice of franchise is effective when it is filed with the Secretary. The notice of franchise must include all of the following:

(1) The applicant's name and principal place of business.

(2) A description and map of the area to be served.

(3) A list of each county and city in which the described service area is located, in whole or in part.

(4) A schedule indicating when service is expected to be offered in the service area.

(b) Commencement of Service. – A person who files a notice of franchise under subsection (a) of this section must begin providing cable service in the service area described in the notice within 120 days after the notice is filed. If cable service does not begin within this period, the notice of franchise terminates 130 days after it was filed. If cable service begins within this period, the holder of the State-issued franchise must file a notice of service with the Secretary within 10 days after the cable service begins. Cable service begins when it passes one or more households in the described service area. This subsection does not apply to a cable service provider who terminates an existing agreement whose franchise area includes all of the service area described in a notice of franchise filed by the provider under subsection (a) of this section.

A notice of service for a service area must include all of the following:

(1) The effective date of a notice of franchise for that area.

(2) A description and map of the service area.

(3) A statement that cable service has begun in the service area.

(c) Extension. – A person who intends to provide cable service over a cable system in an area that is contiguous with but outside the service area described in a notice of franchise on file with the Secretary must file a notice of franchise under subsection (a) of this section that includes the proposed area. The initial service requirements in subsection (b) of this section apply to the proposed area. If the map of

the area to be served includes any area that is part of the service area of another State-issued franchise, the termination of a notice of franchise for the proposed area for failure to begin service within the required time does not affect the status of the other State-issued franchise.

(d) Withdrawal. – A person may withdraw a notice of franchise by filing a notice of withdrawal with the Secretary. The notice of withdrawal must be filed at least 90 days before the service is withdrawn.

"**§ 66-353. Annual service report.**

A holder of a State-issued franchise must file an annual service report with the Secretary. The report must be filed on or before July 31 of each year. The report must be accompanied by a fee in the amount set in G.S. 55-1-22 for filing a corporate annual report. The report must include all of the following:

(1) The effective date of a notice of franchise for that area.
(2) A description and map of the service area.
(3) The approximate number of households in the service area.
(4) A description and a map of the households passed in the service area as of July 1.
(5) The percentage of households passed in the service area as of July 1.
(6) The percentage of households passed in the service area as of July 1 of any preceding year for which a report was required under this section.
(7) A report indicating the extent to which the holder has met the customer service requirements under G.S. 66-356(b).
(8) A schedule indicating when service is expected to be offered in the service area, to the extent the schedule differs from one included in the notice of franchise or in a report previously submitted under this section, and an explanation of the reason for the new schedule.

"**§ 66-354. General filing and report requirements.**

(a) General. – A document filed with the Secretary under this Article must be signed by an officer or general partner of the person submitting the document. Within five days after a person files a document with the Secretary under this Article, the person must send a copy of the document to any county or city included in the service area described in the document. A document filed under this Article is a public record as defined in G.S. 132-1.

A successor in interest to a person who has filed a notice of franchise is not required to file another notice of franchise. When a change in ownership occurs, the owner must file a notice of change in ownership with the Secretary within 14 days after the change becomes effective.

(b) Penalty. – A person who fails to file a notice of franchise, a notice of service, or an annual service report as required under this Article is subject to a civil penalty of two hundred fifty dollars ($250.00) a day until the document is filed. The penalty is payable to the Secretary. The clear proceeds of the penalties collected under this subsection must be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

"**§ 66-355. Effect on existing local franchise agreement.**

(a) Existing Agreement. – This Article does not affect an existing agreement except as follows:

(1) Effective January 1, 2007, gross revenue used to calculate the payment of the franchise tax imposed by G.S. 153A-154 or G.S. 160A-214 does not include gross receipts from cable service subject to sales tax under G.S. 105-164.4. This exclusion does not otherwise affect the calculation of gross revenue and the payment to counties and cities of franchise tax revenue under existing agreements that have not been terminated under subsection (b) of this section.

(2) A cable service provider under an existing agreement may terminate the agreement in accordance with subsection (b) of this section when a notice of service filed under G.S. 66-352 indicates that one or more households in the franchise area of the existing agreement are passed by both the cable service provider under the existing agreement and the holder of a State-issued franchise.

(b) Termination. – To terminate an existing agreement, a cable service provider must file a notice of termination with the affected county or city and file a notice of franchise with the Secretary. A termination of an existing agreement becomes effective at the end of the month in which the notice of termination is filed with the affected county or city. A termination of an existing agreement ends the obligations under the agreement and under any local cable regulatory ordinance that specifically authorizes the agreement as of the effective date of the termination but does not affect the rights or liabilities of the county or city, a taxpayer, or another person arising under the existing agreement or local ordinance before the effective date of the termination.

"**§ 66-356. Service standards and requirements.**

(a) Discrimination Prohibited. – A person who provides cable service over a cable system may not deny access to the service to any group of potential residential subscribers within the filed service area because of the race or income of the residents. A violation of this subsection is considered an unfair or deceptive act or practice under G.S. 75-1.1.

In determining whether a cable service provider has violated this subsection with respect to a group of potential residential subscribers in a service area, the following factors must be considered:

(1) The length of time since the provider filed the notice of service for the area. If less than a year has elapsed since the notice of service was filed, it is conclusively presumed that a violation has not occurred.

(2) The cost of providing service to the affected group due to distance from facilities, density, or other factors.

(3) Technological impediments to providing service to the affected group.

(4) Inability to obtain access to property required to provide service to the affected group.

(5) Competitive pressure to respond to service offered by another cable service provider.

(b) FCC Standards. – A person who provides cable service over a cable system must comply with the customer service requirements in 47 C.F.R. Part 76 and emergency alert requirements established by the Federal Communications Commission.

(c) Complaints. – The Consumer Protection Division of the Attorney General's office is designated as the State agency to receive and respond to customer complaints concerning cable service. A cable service provider who fails to address a customer complaint raised by the Consumer Protection Division in a reasonable time and manner is subject to a civil penalty of one hundred dollars ($100.00) a day until the complaint is addressed. A penalty may not be imposed under this subsection unless the Division has notified the provider of its intent to do so and has given the provider sufficient time to address the complaint. The penalty is payable to the Office of the Attorney General. The clear proceeds of the penalties collected under this subsection must be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

To facilitate the resolution of customer complaints, the cable service provider must include the following information on the customer's bill:

(1) The telephone number for the cable service provider.

(2) The following statement: "If the cable service provider does not satisfactorily resolve your complaint, contact the Consumer Protection Division of the Attorney General's Office of the State of North Carolina."

(3) The telephone number of the Consumer Protection Division of the Attorney General's Office.

(d) No Build-Out. – No build-out requirements apply to a person who provides cable service under a State-issued franchise.

"**§ 66-357. Availability and use of PEG channels.**

(a) Application. – This section applies to a person who provides cable service under a State-issued franchise. It does not apply to a person who provides cable service under an existing agreement.

(b) Local Request. – A county or city must make a written request to a cable service provider for PEG channel capacity. The request must include a statement describing the county's or city's plan to operate and program each channel requested. The cable service provider must provide the requested PEG channel capacity within 120 days after it receives the written request.

(c) Initial PEG Channels. – A city with a population of at least 50,000 is allowed a minimum of three initial PEG channels plus any channels in excess of this minimum that are activated, as of January 1, 2007, under the terms of an existing franchise agreement whose franchise area includes the city. A city with a population of less than 50,000 is allowed a minimum of two initial PEG channels plus any channels in excess of this minimum that are activated, as of January 1, 2007, under the terms of an existing franchise agreement whose franchise area includes the city. For a city included in the franchise area of an existing agreement, the agreement determines the service tier placement and transmission quality of the initial PEG channels. For a city that is not included in the franchise area of an existing agreement, the initial PEG channels must

be on a basic service tier and the transmission quality of the channels must be equivalent to those of the closest city covered by an existing agreement.

A county is allowed a minimum of two initial PEG channels plus any channels in excess of this minimum that are activated, as of January 1, 2007, under the terms of an existing franchise agreement whose franchise area includes the county. For a county included in the franchise area of an existing agreement, the agreement determines the service tier placement and transmission quality of the initial PEG channels. For a county that is not included in the franchise area of an existing agreement, the initial PEG channels must be on a basic service tier and the transmission quality of the channels must be equivalent to those of any city with PEG channels in the county.

The cable service provider must maintain the same channel designation for a PEG channel unless the service area of the State-issued franchise includes PEG channels that are operated by different counties or cities and those PEG channels have the same channel designation.

(d) Additional PEG Channels. – A county or city that does not have seven PEG channels, including the initial PEG channels, is eligible for an additional PEG channel if it meets the programming requirements in this subsection. A county or city that has seven PEG channels is not eligible for an additional channel.

A county or city that meets the programming requirements in this subsection may make a written request under subsection (b) of this section for an additional channel. The additional channel may be provided on any service tier. The transmission quality of the additional channel must be at least equivalent to the transmission quality of the other channels provided.

The PEG channels operated by a county or city must meet the following programming requirements for at least 120 continuous days in order for the county or city to obtain an additional channel:

(1) All of the PEG channels must have scheduled programming for at least eighty percent (80%) of the time for at least eight hours a day.

(2) The programming content of each of the PEG channels must not repeat more than fifteen percent (15%) of the programming content on any of the other PEG channels.

(3) No more than fifteen percent (15%) of the programming content on any of the PEG channels may be character-generated programming.

(e) Use of Channels. – If a county or city no longer provides any programming for transmission over a PEG channel it has activated, the channel may be reprogrammed at the cable service provider's discretion. A cable service provider must give at least 60 days notice to a county or city before it reprograms a PEG channel that is not used. The cable service provider must restore a previously lost PEG channel within 120 days of the date a county or city certifies to the provider a schedule that demonstrates the channel will be used.

(f) Operation of Channels. – A cable service provider is responsible only for the transmission of a PEG channel. The county or city to which the PEG channel is provided is responsible for the operation and content of the channel. A county or city that provides content to a cable service provider for transmission on a PEG channel is

considered to have authorized the provider to transmit the content throughout the provider's service area, regardless of whether part of the service area is outside the boundaries of the county or city.

All programming on a PEG channel must be noncommercial. A cable service provider may not brand content on a PEG channel with its logo, name, or other identifying marks. A cable service provider is not required to transmit content on a PEG channel that is branded with the logo, name, or other identifying marks of another cable service provider.

"**§ 66-358. Transmission of PEG channels.**

(a) Service. – When a cable service provider operating under a State-issued franchise begins providing cable service in an area, the service must include the transmission of PEG channels by one of the following methods:

(1) Interconnection with another cable system operated in its service area. A cable service provider operating in the same service area as a provider under a State-issued franchise must interconnect its cable system on reasonable and competitively neutral terms with the other provider's cable system when it receives a written request for interconnection and may not refuse to interconnect on these terms. Interconnection may be accomplished by direct cable, microwave link, satellite, or another method of connection.

(2) Transmission of the signal from each PEG channel programmer's origination site, if the origination site is in the provider's service area.

(b) Signal. – All PEG channel programming provided to a cable service provider for transmission must meet the federal National Television System Committee standards or the Advanced Television Systems Committee Standards. If a PEG channel programmer complies with these standards and the cable service provider cannot transmit the programming without altering the transmission signal, then the cable service provider must do one of the following:

(1) Alter the transmission signal to make it compatible with the technology or protocol the cable service provider uses to deliver its cable service.

(2) Provide to the county or city the equipment needed to alter the transmission signal to make it compatible with the technology or protocol the cable service provider uses to deliver its cable service.

"**§ 66-359. PEG channel grants.**

(a) PEG Channel Fund. – The PEG Channel Fund is created as an interest-bearing special revenue fund. It consists of revenue allocated to it under G.S. 105-164.44I(b) and any other revenues appropriated to it. The e-NC Authority, created under G.S. 143B-437.46, administers the Fund.

(b) Grants. – A county or city may apply to the e-NC Authority for a grant from the PEG Channel Fund. In awarding grants from the Fund, the e-NC Authority must to the extent possible select applicants from all parts of the State based upon need. Grants from the Fund are subject to the following limitations:

(1) The grant may not exceed twenty thousand dollars ($20,000).

(2) The applicant must match the grant on a dollar-for-dollar basis.

(3) The grant may be used only for capital expenditures necessary to provide PEG channel programming.

(4) An applicant may receive no more than one grant per fiscal year.

(c) Reports. – The e-NC Authority must publish an annual report on grants awarded under this section. The report must list each grant recipient, the amount of the grant, and the purpose of the grant.

"**§ 66-360. Service to public building.**

At the written request of a county or city, a cable service provider operating under a State-issued franchise must provide cable service without charge to a public building located within 125 feet of the provider's cable system. The required service is the basic, or lowest-priced, service the provider offers to customers. The terms and conditions that apply to service provided to a retail customer apply to the service provided to the public building. Only one service outlet is required for a building. The cable service provider is not required to provide concealed inside wiring. A public building is a building used as a public school, a charter school, a county or city library, or a function of the county or city."

SECTION 2. G.S. 105-164.3 is amended by adding a new subdivision to read:

"**§ 105-164.3. Definitions.**

The following definitions apply in this Article:

...

(50c) Video programming. – Programming provided by, or generally considered comparable to programming provided by, a television broadcast station, regardless of the method of delivery."

SECTION 3. G.S. 105-164.4(a)(6) reads as rewritten:

"(6) The combined general rate applies to the gross receipts derived from providing ~~any of the following broadcast services~~ video programming to a subscriber in this State. A cable service provider, a direct-to-home satellite service provider, and any other person engaged in the business of providing ~~any of these services~~ video programming is considered a retailer under this ~~Article:~~Article.

~~a. Direct-to-home satellite service.~~

~~b. Cable service.~~"

SECTION 4. G.S. 105-164.4C(d) is recodified as G.S. 105-164.4D with the catchline "Bundled services."

SECTION 5. G.S. 105-164.4D, as recodified by Section 4 of this act, reads as rewritten:

"**§ 105-164.4D. Bundled services.**

~~Bundled Services.~~ When a taxable ~~telecommunications~~ service is bundled with a service that is not taxable, the tax applies to the gross receipts from the taxable service in the bundle as follows:

(1) If the service provider offers all the services in the bundle on an unbundled basis, tax is due on the unbundled price of the taxable

service, less the discount resulting from the bundling. The discount for a service as the result of bundling is the proportionate price decrease of the service, determined on the basis of the total unbundled price of all the services in the bundle compared to the bundled price of the services.

(2) If the service provider does not offer one or more of the services in the bundle on an unbundled basis, tax is due on the taxable service based on a reasonable allocation of revenue to that service. If the service provider maintains an account for revenue from a taxable service, the service provider's allocation of revenue to that service for the purpose of determining the tax due on the service must reflect its accounting allocation of revenue to that service."

SECTION 6. The catchline to G.S. 105-164.12B reads as rewritten:

"**§ 105-164.12B. ~~Bundled transactions.~~Tangible personal property bundled with service contract.**"

SECTION 7. G.S. 105-164.44F(a) reads as rewritten:

"(a) Amount. – The Secretary must distribute ~~to the cities~~ part of the taxes imposed by G.S. 105-164.4(a)(4c) on telecommunications service. The Secretary must make the distribution within 75 days after the end of each calendar quarter. The amount the Secretary must distribute is ~~eighteen and three one-hundredths percent (18.03%)~~ the following percentages of the net proceeds of the taxes collected during the ~~quarter,~~ quarter:

(1) Eighteen and three one-hundredths percent (18.03%), minus two million six hundred twenty thousand nine hundred forty-eight dollars ~~($2,620,948).~~($2,620,948), must be distributed to cities in accordance with this section. ~~This~~ The deduction is one-fourth of the annual amount by which the distribution to cities of the gross receipts franchise tax on telephone companies, imposed by former G.S. 105-20, was required to be reduced beginning in fiscal year 1995-96 as a result of the "freeze deduction." ~~The Secretary must distribute the specified percentage of the proceeds, less the "freeze deduction" among the cities in accordance with this section.~~

(2) Seven and twenty-three one-hundredths percent (7.23%) must be distributed to counties and cities as provided in G.S. 105-164.44I."

SECTION 8. Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-164.44I. Distribution of part of sales tax on video programming service and telecommunications service to counties and cities.**

(a) Distribution. – The Secretary must distribute to the counties and cities part of the taxes imposed by G.S. 105-164.4(a)(4c) on telecommunications service and G.S. 105-164.4(a)(6) on video programming service. The Secretary must make the distribution within 75 days after the end of each calendar quarter. The amount the Secretary must distribute is the sum of the revenue listed in this subsection. The Secretary must distribute two million dollars ($2,000,000) of this amount in accordance

with subsection (b) of this section and the remainder in accordance with subsections (c) and (d) of this section. The revenue to be distributed under this section consists of the following:

(1) The amount specified in G.S. 105-164.44F(a)(2).

(2) Twenty-two and sixty-one one-hundredths percent (22.61%) of the net proceeds of the taxes collected during the quarter on video programming, other than on direct-to-home satellite service.

(3) Thirty-seven percent (37%) of the net proceeds of the taxes collected during the quarter on direct-to-home satellite service.

(b) Supplemental PEG Support. – The Secretary must include the applicable amount of supplemental PEG channel support in each quarterly distribution to a county or city. The amount to include is one-fourth of twenty-five thousand dollars ($25,000) for each qualifying PEG channel operated by the county or city. The amount of money distributed under this subsection may not exceed two million dollars ($2,000,000) in a fiscal year. If the amount to be distributed for qualifying PEG channels in a fiscal year would otherwise exceed this maximum amount, the Secretary must proportionately reduce the applicable amount distributable for each PEG channel. If the amount to be distributed for qualifying PEG channels in a fiscal year is less than two million dollars ($2,000,000), the Secretary must credit the excess amount to the PEG Channel Fund, established in G.S. 66-359.

A county or city must certify to the Secretary by July 15 of each year the number of qualifying PEG channels it operates. A qualifying PEG channel is one that meets the programming requirements under G.S. 66-357(d). A county or city may not receive PEG channel support under this subsection for more than three qualifying PEG channels.

The amount included under this subsection in a distribution to a county or city is intended to supplement the PEG channel support available in the amount distributed under this section. The money distributed to a county or city under this subsection must be used by it for the operation and support of PEG channels. For purposes of this subsection, the term "PEG channel" has the same meaning as in G.S. 66-350.

(c) 2006-2007 Fiscal Year Distribution. – The share of a county or city is its proportionate share of the amount to be distributed to all counties and cities under this subsection. The proportionate share of a county or city is the base amount for the county or city compared to the base amount for all other counties and cities. The base amount of a county or city that did not impose a cable franchise tax under G.S. 153A-154 or G.S. 160A-214 before July 1, 2006, is two dollars ($2.00) times the most recent annual population estimate for that county or city. The base amount of a county or city that imposed a cable franchise tax under either G.S. 153A-154 or G.S. 160A-214 before July 1, 2006, is the amount of cable franchise tax and subscriber fee revenue the county or city certifies to the Secretary that it imposed during the first six months of the 2006-2007 fiscal year. A county or city must make this certification by January 15, 2007. The certification must specify the amount of revenue that is derived from the cable franchise tax and the amount that is derived from the subscriber fee.

(d) Subsequent Distributions. – For subsequent fiscal years, the Secretary must multiply the amount of a county's or city's share under this section for the preceding fiscal year by the percentage change in its population for that fiscal year and add the result to the county's or city's share for the preceding fiscal year to obtain the county's or city's adjusted amount. Each county's or city's proportionate share for that year is its adjusted amount compared to the sum of the adjusted amounts for all counties and cities.

(e) Use of Proceeds. – A county or city that imposed subscriber fees during the first six months of the 2006-2007 fiscal year must use a portion of the funds distributed to it under subsections (c) and (d) of this section for the operation and support of PEG channels. The amount of funds that must be used for PEG channel operation and support is two times the amount of subscriber fee revenue the county or city certified to the Secretary that it imposed during the first six months of the 2006-2007 fiscal year. The remainder of the distribution may be used for any public purpose.

(f) Late Information. – A county or city that does not submit information that the Secretary needs to make a distribution by the date the information is due is excluded from the distribution. If the county or city later submits the required information, the Secretary must include the county or city in the distribution for the quarter that begins after the date the information is received.

(g) Population Determination. – In making population determinations under this section, the Secretary must use the most recent annual population estimates certified to the Secretary by the State Budget Officer. For purposes of the distributions made under this section, the population of a county is the population of its unincorporated areas plus the population of an ineligible city in the county, as determined under subsection (g) of this section.

(h) City Changes. – The following changes apply when a city alters its corporate structure or incorporates:

(1) If a city dissolves and is no longer incorporated, the proportional shares of the remaining counties and cities must be recalculated to adjust for the dissolution of that city.

(2) If two or more cities merge or otherwise consolidate, their proportional shares are combined.

(3) If a city divides into two or more cities, the proportional share of the city that divides is allocated among the new cities on a per capita basis.

(4) If a city incorporates after January 1, 2007, and the incorporation is not addressed by subdivisions (2) or (3) of this subsection, the share of the county in which the new city is located is allocated between the county and the new city on a per capita basis.

(i) Ineligible Cities. – An ineligible city is disregarded for all purposes under this section. A city incorporated on or after January 1, 2000, is not eligible for a distribution under this section unless it meets both of the following requirements:

(1) It is eligible to receive funds under G.S. 136-41.2.

(2) A majority of the mileage of its streets is open to the public.

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

SECTION 9. G.S. 105-164.21B is repealed.

SECTION 10. G.S. 153A-137 is repealed.

SECTION 11. G.S. 153A-154 is repealed.

SECTION 12. G.S. 160A-211 reads as rewritten:

"**§ 160A-211. Privilege license taxes.**

(a) Authority. – Except as otherwise provided by law, a city shall have power to levy privilege license taxes on all trades, occupations, professions, businesses, and franchises carried on within the city. A city may levy privilege license taxes on the businesses that were formerly taxed by the State under the following sections of Article 2 of Chapter 105 of the General Statutes only to the extent the sections authorized cities to tax the businesses before the sections were repealed:

G.S. 105-36	Amusements – Manufacturing, selling, leasing, or distributing moving picture films.
G.S. 105-36.1	Amusements – Outdoor theatres.
G.S. 105-37	Amusements – Moving pictures – Admission.
G.S. 105-42	Private detectives and investigators.
G.S. 105-45	Collecting agencies.
G.S. 105-46	Undertakers and retail dealers in coffins.
G.S. 105-50	Pawnbrokers.
G.S. 105-51.1	Alarm systems.
G.S. 105-53	Peddlers, itinerant merchants, and specialty market operators.
G.S. 105-54	Contractors and construction companies.
G.S. 105-55	Installing elevators and automatic sprinkler systems.
G.S. 105-61	Hotels, motels, tourist courts and tourist homes.
G.S. 105-62	Restaurants.
G.S. 105-65	Music machines.
G.S. 105-65.1	Merchandising dispensers and weighing machines.
G.S. 105-66.1	Electronic video games.
G.S. 105-74	Pressing clubs, dry cleaning plants, and hat blockers.
G.S. 105-77	Tobacco warehouses.
G.S. 105-80	Firearms dealers and dealers in other weapons.
G.S. 105-85	Laundries.
G.S. 105-86	Outdoor advertising.
G.S. 105-89	Automobiles, wholesale supply dealers, and service stations.
G.S. 105-89.1	Motorcycle dealers.
G.S. 105-90	Emigrant and employment agents.
G.S. 105-91	Plumbers, heating contractors, and electricians.

G.S. 105-97	Manufacturers of ice cream.
G.S. 105-98	Branch or chain stores.
G.S. 105-99	Wholesale distributors of motor fuels.
G.S. 105-102.1	Certain cooperative associations.
G.S. 105-102.5	General business license.

(b) Barbershop and Salon Restriction. – A privilege license tax levied by a city on a barbershop or a beauty salon may not exceed two dollars and fifty cents ($2.50) for each barber, manicurist, cosmetologist, beautician, or other operator employed in the barbershop or beauty salon.

(c) ~~Piped Gas Restriction.~~ Prohibition.– A city may not ~~levy a privilege license tax on a person who is engaged in the business of supplying piped natural gas and is subject to tax under Article 5E of Chapter 105 of the General Statutes.~~ impose a license, franchise, or privilege tax on a person engaged in any of the businesses listed in this subsection. These businesses are subject to a State tax for which the city receives a share of the tax revenue.

(1) Supplying piped natural gas taxed under Article 5E of Chapter 105 of the General Statutes.

(2) Providing telecommunications service taxed under G.S. 105-164.4(a)(4c).

(3) Providing video programming taxed under G.S. 105-164.4(a)(6).

~~(d) Telecommunications Restriction. A city may not impose a license, franchise, or privilege tax on a company taxed under G.S. 105-164.4(a)(4c).~~"

SECTION 13. G.S. 160A-214 is repealed.

SECTION 14. G.S. 160A-296(a) reads as rewritten:

"(a) A city shall have general authority and control over all public streets, sidewalks, alleys, bridges, and other ways of public passage within its corporate limits except to the extent that authority and control over certain streets and bridges is vested in the Board of Transportation. General authority and control includes but is not limited ~~to:~~to all of the following:

(1) The duty to keep the public streets, sidewalks, alleys, and bridges in proper ~~repair;~~repair.

(2) The duty to keep the public streets, sidewalks, alleys, and bridges open for travel and free from unnecessary ~~obstructions;~~obstructions.

(3) The power to open new streets and alleys, and to widen, extend, pave, clean, and otherwise improve existing streets, sidewalks, alleys, and bridges, and to acquire the necessary land therefor by dedication and acceptance, purchase, or eminent ~~domain;~~domain.

(4) The power to close any street or alley either permanently or ~~temporarily;~~temporarily.

(5) The power to regulate the use of the public streets, sidewalks, alleys, and ~~bridges;~~bridges.

(6) The power to regulate, license, and prohibit digging in the streets, sidewalks, or alleys, or placing therein or thereon any pipes, poles,

wires, fixtures, or appliances of any kind either on, above, or below the ~~surface;~~.surface. In exercising this power, a city may not impose a fee or charge for use of the public right-of-way unless the fee or charge applies uniformly to all non-municipal users of the public right-of-way.

(7) The power to provide for lighting the streets, alleys, and bridges of the ~~city; and~~city.

(8) The power to grant easements in street rights-of-way as permitted by G.S. 160A-273."

SECTION 15. G.S. 160A-319(a) reads as rewritten:

"(a) A city shall have authority to grant upon reasonable terms franchises for ~~the operation within the city of~~ a telephone system and any of the enterprises listed in ~~G.S. 160A-311 and for the operation of telephone systems.~~ G.S. 160A-311, except a cable television system. A franchise granted by a city authorizes the operation of the franchised activity within the city. No franchise shall be granted for a period of more than 60 years, except that a franchise for solid waste collection or disposal systems and facilities shall not be granted for a period of more than 30 ~~years and cable television franchises shall not be granted for a period of more than 20~~ years. Except as otherwise provided by law, when a city operates an enterprise, or upon granting a franchise, a city may by ordinance make it unlawful to operate an enterprise without a franchise."

SECTION 16. To make the distribution required under G.S. 105-164.44I(c), as enacted by this act, for the 2006-2007 fiscal year, a county or city must certify to the Secretary of Revenue by January 15, 2007, the number of qualifying PEG channels it operates.

SECTION 17. A primary purpose of this act is to promote consumer choice in video service providers. A premise of this goal is that increased competition will lead to improved service. Under competition, a customer who is dissatisfied with service by one cable service provider will have the option of choosing a different service provider.

G.S. 66-356, as enacted by this act, designates the Consumer Protection Division of the Attorney General's Office as the agency to receive and respond to unresolved customer complaints about cable service provided by the holder of a State-issued franchise. The transition from local franchise agreements to State-issued franchises will occur gradually.

Due to the expected improvement in customer service and the gradual change to State-issued franchises, the impact of the requirement in new G.S. 66-356 on the staffing needs of the Consumer Protection Division is not clear. The Office of the Attorney General is therefore requested to monitor the number and type of cable service complaints it receives from customers in areas served under a local franchise agreement and from areas served under a State-issued franchise to determine whether the Consumer Protection Division needs additional staff to fulfill the duty imposed by new G.S. 66-356 and to make a report concerning staffing to the Fiscal Research Division of the North Carolina General Assembly by April 1, 2007.

SECTION 18. The Secretary of State has no authority to determine whether a person who is providing video programming is providing cable service over a cable

system. An award of a State-issued franchise under Article 42 of Chapter 66 of the General Statutes, as enacted by this act, does not affect a determination of whether video programming provided by the holder of the franchise is considered cable service provided over a cable system under federal law or under a state law that applies substantially the same definitions of "cable service" and "cable system" as federal law.

SECTION 19. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 20. The Revenue Laws Study Committee must review the effect Article 42 of Chapter 66, as enacted by this act, has on the following to determine if any changes to the law are needed and must report its findings to the 2009 Session of the North Carolina General Assembly:

(1) Competition in video programming services.

(2) The number of cable service subscribers, the price of cable service by service tier, and the technology used to deliver the service.

(3) The deployment of broadband in the State.

SECTION 21. This act becomes effective January 1, 2007. Sections 7 and 8 of this act apply to the distribution made within 75 days after March 31, 2007, for the quarter starting January 1, 2007.

HOUSE BILL 2047*

Short Title:	Video Service Competition Act.	(Public)
Sponsors:	Representatives Carney, Luebke, McComas, Wainwright (Primary Sponsors); Brubaker, Church, Hill, Wilkins, Adams, and Faison.	
Referred to:	Finance.	

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO PROMOTE CONSUMER CHOICE IN VIDEO SERVICE PROVIDERS AND TO ESTABLISH UNIFORM TAXES FOR VIDEO PROGRAMMING SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 66 of the General Statutes is amended by adding a new Article to read:

"Article 42.

"State Franchise for Cable Television Service.

"**§ 66-350. Definitions.**

The following definitions apply in this Article:

(1) Cable service. – Defined in G.S. 105-164.3.

(2) Cable system. – Defined in 47 U.S.C. § 522.

(3) Channel. – A portion of the electromagnetic frequency spectrum that is used in a cable system and is capable of delivering a television channel.

(4) Commission. – The North Carolina Utilities Commission.

(5) Existing agreement. – A local franchise agreement that was awarded under G.S. 153A-137 or G.S. 160A-319 and is in effect on January 1, 2007.

(6) Pass a household. – Make service available to a household, regardless of whether the household subscribes to the service.

(7) PEG channel. – A public, educational, or governmental access channel provided to a county or city.

"**§ 66-351. State franchising authority.**

(a) Authority. – The North Carolina Utilities Commission is designated the exclusive franchising authority in this State for cable service provided over a cable system. This designation replaces the authorization to counties and cities in former

G.S. 153A-137 and G.S. 160A-319 to award a franchise for cable service. This designation is effective January 1, 2007. After this date, a county or city may not award or renew a franchise for cable service.

(b) Award and Scope. – The Commission is considered to have awarded a franchise to a person who files a notice of service under G.S. 66-352. A franchise for cable service authorizes the holder of the franchise to construct and operate a cable system over public rights-of-way within the area to be served. Chapter 160A of the General Statutes governs the regulation of public rights-of-way by a city.

"**§ 66-352. Notice and commencement of service.**

(a) Notice of Service. – A person who intends to provide cable service over a cable system in an area must file a notice of service with the Commission before providing the service. The notice is effective when it is filed with the Commission. The notice of service must include all of the following:

(1) The applicant's name and principal place of business.

(2) A description and map of the area to be served.

(3) A list of each county and city in which the described service area is located, in whole or in part.

(4) A schedule indicating when service is expected to be offered in part or all of the service area.

(b) Initial Service. – A person who files a notice of service under subsection (a) of this section must begin providing cable service in the service area described in the notice within 120 days after the notice is filed. If cable service does not begin within this period, the notice of service terminates 130 days after it was filed. If cable service begins within this period, the holder of the State-issued franchise must file a report of initial service with the Commission within 10 days after the cable service begins. Cable service begins when it passes one or more households in the described service area. This subsection does not apply to a cable service provider who terminates an existing agreement whose franchise area includes all of the service area described in a notice of service filed by the provider under subsection (a) of this section.

A report of initial service for a service area must include all of the following:

(1) The effective date of a notice of service for that area.

(2) A description and map of the service area.

(3) A statement that cable service has begun in the service area.

(c) Extension. – A person who intends to provide cable service over a cable system in an area that is contiguous with but outside the service area described in a notice of service on file with the Commission must file a notice of service under subsection (a) of this section that includes the proposed area. The initial service requirements in subsection (b) of this section apply to the proposed area. If the map of the area to be served includes any area that is part of the service area of another State-issued franchise, the termination of a notice of service for the proposed area for failure to begin service within the required time does not affect the status of the other State-issued franchise.

(d) Withdrawal. – A person may withdraw a notice of service by filing a notice of withdrawal with the Commission. The notice of withdrawal must be filed at least 90 days before the service is withdrawn.

"**§ 66-353. Annual service report.**

A holder of a State-issued franchise must file an annual service report with the Commission. The report must be filed on or before July 15 of each year. The report must include all of the following:

(1) The effective date of a notice of service for that area.
(2) A description and map of the service area.
(3) The approximate number of households in the service area.
(4) A description and a map of the households passed in the service area as of July 1.
(5) The percentage of households passed in the service area as of July 1.
(6) The percentage of households passed in the service area as of July 1 of any preceding year for which a report was required under this subsection.
(7) A schedule indicating when service is expected to be offered in part or all of the service area, to the extent the schedule differs from one included in the notice of service or in a report previously submitted under this subsection, and an explanation of the reason for the new schedule.

"**§ 66-354. General filing and report requirements.**

A document filed with the Commission under this section must be signed by an officer or general partner of the person submitting the document. Within five days after a person files a document with the Commission under this section, the person must send a copy of the document to any county or city included in the service area described in the document. A document filed under this section is a public record as defined in G.S. 132-1.

A successor in interest to a person who has filed a notice of service is not required to file another notice of service. When a change in ownership occurs, the owner must file a notice of change in ownership with the Commission within 14 days after the change becomes effective.

"**§ 66-355. Effect on existing local franchise agreement.**

(a) Existing Agreement. – This Article does not affect an existing agreement except as follows:

(1) Effective January 1, 2007, gross revenue used to calculate the payment of the franchise tax imposed by G.S. 153A-154 or G.S. 160A-214 does not include gross receipts from cable service subject to sales tax under G.S. 105-164.4. This exclusion does not otherwise affect the calculation of gross revenue and the payment to counties and cities of franchise tax revenue under existing agreements that have not been terminated under subsection (b) of this section.
(2) A cable service provider under an existing agreement may terminate the agreement in accordance with subsection (b) of this section when a

report of initial service filed under G.S. 66-352 indicates that one or more households in the franchise area of the existing agreement are passed by both the cable service provider under the existing agreement and the holder of a State-issued franchise.

(b) Termination. – To terminate an existing agreement, a cable service provider must file a notice of termination with the affected county or city and file a notice of service with the Commission. A termination of an existing agreement becomes effective at the end of a calendar quarter that is at least 30 days after the notice of termination is filed with the affected county or city. A termination of an existing agreement ends the obligations under the agreement as of the effective date of the termination but does not affect the rights or liabilities of the county or city, a taxpayer, or another person arising under the existing agreement before the effective date of the termination.

"**§ 66-356. Service standards and requirements.**

(a) Discrimination Prohibited. – A person who provides cable service over a cable system may not deny access to the service to any group of potential residential subscribers within the filed service area because of the race or income of the residents. A violation of this subsection is considered an unfair or deceptive act or practice under G.S. 75-1.1.

In determining whether a cable service provider has violated this subsection with respect to a group of potential residential subscribers in a service area, the following factors must be considered:

(1) The length of time since the provider filed the notice of service for the area. If less than a year has elapsed since the notice of service was filed, it is conclusively presumed that a violation has not occurred.

(2) The cost of providing service to the affected group due to distance from facilities, density, or other factors.

(3) Technological impediments to providing service to the affected group.

(4) Inability to obtain access to property required to provide service to the affected group.

(b) FCC Standards. – A person who provides cable service over a cable system must comply with the customer service requirements in 47 C.F.R. § 76.309 and emergency alert requirements established by the Federal Communications Commission. The Consumer Protection Division of the Attorney General's office is designated as the State agency to receive and respond to customer complaints concerning cable service. The number for the Division must be printed on the customer's bill.

(c) No Build-Out. – No build-out requirements apply to a person who provides cable service under a State-issued franchise.

"**§ 66-357. Availability and use of PEG channels.**

(a) Application. – This section applies to a person who provides cable service under a State-issued franchise. It does not apply to a person who provides cable service under an existing agreement.

(b) Local Request. – A county or city must make a written request to a cable service provider for PEG channel capacity. The request must include a statement describing the county's or city's plan to operate and program each channel requested.

The cable service provider must provide the requested PEG channel capacity within 120 days after it receives the written request.

(c) Initial PEG Channels. – If an area is included in both the franchise area of an existing agreement and the service area of a State-issued franchise, the terms of the existing agreement, as of the filing date on the notice of service for the State-issued franchise, determine the required number, service tier placement, and transmission quality of initial PEG channels. The cable service provider must provide the number of PEG channels activated under those terms, giving equivalent service tier placement and transmission quality to those channels. The cable service provider must maintain the same channel designation for a PEG channel unless the service area of the State-issued franchise includes PEG channels that are operated by different counties or cities and those PEG channels have the same channel designation. The expiration of an existing agreement after January 1, 2007, does not affect the requirements in this subsection.

If no existing agreement includes any part of the service area of a State-issued franchise, then the number, service tier placement, and transmission quality of the initial PEG channels a cable service provider must provide depends upon the population of the city in which part or all of the service area is located. If the city's population is at least 50,000, the cable service provider must provide up to three PEG channels on a basic service tier. If the city's population is less than 50,000, a cable service provider must provide up to two PEG channels on a basic service tier. The transmission quality of these PEG channels must be equivalent to those of the closest city covered by an existing agreement.

(d) Additional PEG Channels. – A county or city that does not have seven PEG channels, including the initial PEG channels, is eligible for an additional PEG channel if it meets the programming requirements in this subsection. A county or city that has seven PEG channels is not eligible for an additional channel.

A county or city that meets the programming requirements in this subsection may make a written request under subsection (b) of this section for an additional channel. The additional channel may be provided on any service tier. The transmission quality of the additional channel must be at least equivalent to the transmission quality of the other channels provided.

The PEG channels operated by a county or city must meet the following programming requirements in order for the county or city to obtain an additional channel:

(1) All of the PEG channels must have scheduled programming for at least eighty percent (80%) of the time for at least eight hours a day.

(2) The programming content of each of the PEG channels must not repeat more than fifteen percent (15%) of the programming content on any of the other PEG channels.

(3) No more than fifteen percent (15%) of the programming content on any of the PEG channels may be character-generated programming.

(e) Use of Channels. – If a county or city no longer provides any programming for transmission over a PEG channel it has activated, the channel may be reprogrammed at the cable service provider's discretion. A cable service provider must give at least 60

days notice to a county or city before it reprograms a PEG channel that is not used. The cable service provider must restore a previously lost PEG channel within 120 days of the date a county or city certifies to the provider a schedule that demonstrates the channel will be used.

(f) Operation of Channels. – A cable service provider is responsible only for the transmission of a PEG channel. The county or city to which the PEG channel is provided is responsible for the operation and content of the channel. A county or city that provides content to a cable service provider for transmission on a PEG channel is considered to have authorized the provider to transmit the content throughout the provider's service area, regardless of whether part of the service area is outside the boundaries of the county or city.

All programming on a PEG channel must be noncommercial. A cable service provider is not required to transmit content on a PEG channel that is branded with the logo, name, or other identifying marks of another cable service provider.

"**§ 66-358. Transmission of PEG channels.**

(a) Service. – When a cable service provider operating under a State-issued franchise begins providing cable service in an area, the service must include the transmission of PEG channels by one of the following methods:

(1) Interconnection of its cable system on reasonable and competitively neutral terms with any other cable system operated in its franchise or service area. Interconnection may be accomplished by direct cable, microwave link, satellite, or other method of connection.

(2) Transmission of the signal from each PEG channel programmer's origination site.

(b) Signal. – All PEG channel programming must meet the minimum recognized technical standards for the format used. If a PEG channel programmer transmits its signal in a format a cable service provider cannot transmit without altering the transmission signal, then the cable service provider must do one of the following:

(1) Alter the transmission signal to make it compatible with the technology or protocol the cable service provider uses to deliver its cable service.

(2) Provide to the county or city equipment needed to alter the transmission signal to make it compatible with the technology or protocol the cable service provider uses to deliver its cable service.

"**§ 66-359. Service to public building.**

At the written request of a county or city, a cable service provider operating under a State-issued franchise must provide cable service without charge to a public building located within 125 feet of the provider's cable system. The required service is the basic, or lowest-priced, service the provider offers to customers. The terms and conditions that apply to service provided to a retail customer apply to the service provided to the public building. Only one service outlet is required for a building. The cable service provider is not required to provide concealed inside wiring. A public building is a building used as a public school, a charter school, a county or city library, or a function of the county or city."

SECTION 2. G.S. 105-164.3 is amended by adding a new subdivision to read:

"**§ 105-164.3. Definitions.**

The following definitions apply in this Article:

...

(50c) Video programming. – Programming provided by, or generally considered comparable to programming provided by, a television broadcast station, regardless of the method of delivery."

SECTION 3. G.S. 105-164.4(a)(6) reads as rewritten:

"(6) The combined general rate applies to the gross receipts derived from providing ~~any of the following broadcast services~~ video programming to a subscriber in this State. A cable service provider, a direct-to-home satellite service provider, and any other person engaged in the business of providing ~~any of these services~~ video programming is considered a retailer under this ~~Article:~~Article.

~~a. Direct-to-home satellite service.~~

~~b. Cable service.~~"

SECTION 4. G.S. 105-164.4C(d) is recodified as G.S. 105-164.4D with the catchline "Bundled services."

SECTION 5. G.S. 105-164.4D, as recodified by Section 4 of this act, reads as rewritten:

"**§ 105-164.4D. Bundled services.**

~~Bundled Services. —~~When a taxable ~~telecommunications~~ service is bundled with a service that is not taxable, the tax applies to the gross receipts from the taxable service in the bundle as follows:

(1) If the service provider offers all the services in the bundle on an unbundled basis, tax is due on the unbundled price of the taxable service, less the discount resulting from the bundling. The discount for a service as the result of bundling is the proportionate price decrease of the service, determined on the basis of the total unbundled price of all the services in the bundle compared to the bundled price of the services.

(2) If the service provider does not offer one or more of the services in the bundle on an unbundled basis, tax is due on the taxable service based on a reasonable allocation of revenue to that service. If the service provider maintains an account for revenue from a taxable service, the service provider's allocation of revenue to that service for the purpose of determining the tax due on the service must reflect its accounting allocation of revenue to that service."

SECTION 6. The catchline to G.S. 105-164.12B reads as rewritten:

"**§ 105-164.12B. ~~Bundled transactions.~~Tangible personal property bundled with service contract.**"

SECTION 7. G.S. 105-164.44F(a) reads as rewritten:

"(a) Amount. – The Secretary must distribute ~~to the cities~~ part of the taxes imposed by G.S. 105-164.4(a)(4c) on telecommunications service. The Secretary must make the distribution within 75 days after the end of each calendar quarter. The amount the Secretary must distribute is ~~eighteen and three one-hundredths percent (18.03%)~~ the following percentages of the net proceeds of the taxes collected during the ~~quarter,~~ quarter:

(1) Eighteen and three one-hundredths percent (18.03%), minus two million six hundred twenty thousand nine hundred forty-eight dollars ~~($2,620,948).~~($2,620,948), must be distributed to cities in accordance with this section. ~~This~~ The deduction is one-fourth of the annual amount by which the distribution to cities of the gross receipts franchise tax on telephone companies, imposed by former G.S. 105-20, was required to be reduced beginning in fiscal year 1995-96 as a result of the "freeze deduction." ~~The Secretary must distribute the specified percentage of the proceeds, less the "freeze deduction" among the cities in accordance with this section.~~

(2) Seven and twenty-three one-hundredths percent (7.23%) must be distributed to counties and cities as provided in G.S. 105-164.44I."

SECTION 8. Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-164.44I. Distribution of part of sales tax on video programming service and telecommunications service to counties and cities.**

(a) Distribution. – The Secretary must distribute to the counties and cities part of the taxes imposed by G.S. 105-164.4(a)(4c) on telecommunications service and G.S. 105-164.4(a)(6) on video programming service. The Secretary must make the distribution within 75 days after the end of each calendar quarter. The amount the Secretary must distribute is the sum of the following:

(1) The amount specified in G.S. 105-164.44F(a)(2).

(2) Twenty-two and sixty-one one-hundredths percent (22.61%) of the net proceeds of the taxes collected during the quarter on video programming, other than on direct-to-home satellite service.

(3) Thirty-seven percent (37%) of the net proceeds of the taxes collected during the quarter on direct-to-home satellite service.

(b) Supplemental PEG Support. – The Secretary must include the applicable amount of supplemental PEG channel support in each quarterly distribution to a county or city. The amount to include is one-fourth of sixteen thousand dollars ($16,000) for each qualifying PEG channel operated by the county or city. The amount of money distributed under this subsection may not exceed two million dollars ($2,000,000) in a calendar year. If the amount to be distributed for qualifying PEG channels in a calendar year would otherwise exceed this maximum amount, the Secretary must proportionately reduce the applicable amount distributable for each PEG channel. The amount included under this subsection in a distribution to a county or city is intended to supplement the PEG channel support available in the amount distributed under this section.

A county or city must certify to the Secretary by January 15 of each year the number of qualifying PEG channels it operates. A qualifying PEG channel is one that meets the programming requirements under G.S. 66-357(d). A county or city may not receive PEG channel support for more than three qualifying PEG channels.

The money distributed to a county or city under this subsection must be used by it for the operation and support of PEG channels. For purposes of this subsection, the term "PEG channel" has the same meaning as in G.S. 66-350.

(c) Counties and Cities Without Local Cable Revenue. – The share of a county that did not impose a cable franchise tax under G.S. 153A-154 before January 1, 2007, is one dollar ($1.00) times the most recent annual population estimate for that county. The share of a city that did not impose a cable franchise tax under G.S. 160A-214 before January 1, 2007, is two dollars ($2.00) times the most recent annual population estimate for that city.

(d) Counties and Cities With Local Cable Revenue. – The share of a county or city that imposed a cable franchise tax under either G.S. 153A-154 or G.S. 160A-214 before January 1, 2007, is its proportionate share of the amount to be distributed to all counties and to all cities eligible to receive a distribution under this subsection. The amount to be distributed under this subsection is the amount determined under subsection (a) of this section, minus the amount distributed under subsections (b) and (c) of this section. A county's and city's proportionate share is the amount of cable franchise tax it received under G.S. 153A-154 or G.S. 160A-214 during the 2005-2006 fiscal year plus the amount of a subscriber fee imposed during the 2005-2006 fiscal year compared to the amount of cable franchise tax revenue and subscriber fee revenue all counties and cities received in that fiscal year. Each county or city that imposed a franchise tax under G.S. 153A-154 or G.S. 160A-214 must certify to the Secretary by January 15, 2007, the amount of cable franchise tax revenue and subscriber fee revenue it received in the 2005-2006 fiscal year.

For subsequent fiscal years, the Secretary must multiply the amount of a county's or city's share under this subsection for the preceding year by the percentage change in its population for that fiscal year and add the result to the county's or city's share for the preceding fiscal year to obtain the county's or city's adjusted amount. Each county's or city's proportionate share for that year is its adjusted amount compared to the sum of the adjusted amounts for all counties and cities.

(e) Population Determination. – In making population determinations under this section, the Secretary must use the most recent annual population estimates certified to the Secretary by the State Budget Officer. For purposes of the distributions made under this section, the population of a county is the population of its unincorporated areas plus the population of an ineligible city in the county, as determined under subsection (g) of this section.

(f) Change in City Structure. – The following changes apply when a city alters its corporate structure:

(1) If a city dissolves and is no longer incorporated, the proportional shares of the remaining counties and cities must be recalculated to adjust for the dissolution of that city.

(2) If two or more cities merge or otherwise consolidate, their proportional shares are combined.

(3) If a city divides into two or more cities, the proportional share of the city that divides is allocated among the new cities on a per capita basis.

(g) Ineligible Cities. – An ineligible city is disregarded for all purposes under this section. A city incorporated on or after January 1, 2000, is not eligible for a distribution under this section unless it meets both of the following requirements:

(1) It is eligible to receive funds under G.S. 136-41.2.

(2) A majority of the mileage of its streets is open to the public.

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

SECTION 9. G.S. 105-164.21B is repealed.

SECTION 10. G.S. 153A-137 is repealed.

SECTION 11. G.S. 153A-154 is repealed.

SECTION 12. G.S. 160A-211 reads as rewritten:

"**§ 160A-211. Privilege license taxes.**

(a) Authority. – Except as otherwise provided by law, a city shall have power to levy privilege license taxes on all trades, occupations, professions, businesses, and franchises carried on within the city. A city may levy privilege license taxes on the businesses that were formerly taxed by the State under the following sections of Article 2 of Chapter 105 of the General Statutes only to the extent the sections authorized cities to tax the businesses before the sections were repealed:

G.S. 105-36	Amusements – Manufacturing, selling, leasing, or distributing moving picture films.
G.S. 105-36.1	Amusements – Outdoor theatres.
G.S. 105-37	Amusements – Moving pictures – Admission.
G.S. 105-42	Private detectives and investigators.
G.S. 105-45	Collecting agencies.
G.S. 105-46	Undertakers and retail dealers in coffins.
G.S. 105-50	Pawnbrokers.
G.S. 105-51.1	Alarm systems.
G.S. 105-53	Peddlers, itinerant merchants, and specialty market operators.
G.S. 105-54	Contractors and construction companies.
G.S. 105-55	Installing elevators and automatic sprinkler systems.
G.S. 105-61	Hotels, motels, tourist courts and tourist homes.
G.S. 105-62	Restaurants.
G.S. 105-65	Music machines.
G.S. 105-65.1	Merchandising dispensers and weighing machines.
G.S. 105-66.1	Electronic video games.
G.S. 105-74	Pressing clubs, dry cleaning plants, and hat blockers.

G.S. 105-77	Tobacco warehouses.
G.S. 105-80	Firearms dealers and dealers in other weapons.
G.S. 105-85	Laundries.
G.S. 105-86	Outdoor advertising.
G.S. 105-89	Automobiles, wholesale supply dealers, and service stations.
G.S. 105-89.1	Motorcycle dealers.
G.S. 105-90	Emigrant and employment agents.
G.S. 105-91	Plumbers, heating contractors, and electricians.
G.S. 105-97	Manufacturers of ice cream.
G.S. 105-98	Branch or chain stores.
G.S. 105-99	Wholesale distributors of motor fuels.
G.S. 105-102.1	Certain cooperative associations.
G.S. 105-102.5	General business license.

(b) Barbershop and Salon Restriction. – A privilege license tax levied by a city on a barbershop or a beauty salon may not exceed two dollars and fifty cents ($2.50) for each barber, manicurist, cosmetologist, beautician, or other operator employed in the barbershop or beauty salon.

(c) ~~Piped Gas Restriction.~~ Prohibition. – A city may not ~~levy a privilege license tax on a person who is engaged in the business of supplying piped natural gas and is subject to tax under Article 5E of Chapter 105 of the General Statutes.~~ impose a license, franchise, or privilege tax on a person engaged in any of the businesses listed in this subsection. These businesses are subject to a State tax for which the city receives a share of the tax revenue.

(1) Supplying piped natural gas taxed under Article 5E of Chapter 105 of the General Statutes.

(2) Providing telecommunications service taxed under G.S. 105-164.4(a)(4c).

(3) Providing video programming taxed under G.S. 105-164.4(a)(6).

~~(d) Telecommunications Restriction. A city may not impose a license, franchise, or privilege tax on a company taxed under G.S. 105-164.4(a)(4c).~~"

SECTION 13. G.S. 160A-214 is repealed.

SECTION 14. G.S. 160A-319(a) reads as rewritten:

"(a) A city shall have authority to grant upon reasonable terms franchises for ~~the operation within the city of~~ a telephone system and any of the enterprises listed in ~~G.S. 160A-311 and for the operation of telephone systems.~~ G.S. 160A-311, except a cable television system. A franchise granted by a city authorizes the operation of the franchised activity within the city. No franchise shall be granted for a period of more than 60 years, except that a franchise for solid waste collection or disposal systems and facilities shall not be granted for a period of more than 30 ~~years and cable television franchises shall not be granted for a period of more than 20~~ years. Except as otherwise provided by law, when a city operates an enterprise, or upon granting a franchise, a city may by ordinance make it unlawful to operate an enterprise without a franchise."

SECTION 15. An award of a State-issued franchise under Article 42 of Chapter 66 of the General Statutes, as enacted by this act, does not affect a determination of whether video programming provided by the holder of the franchise is considered cable service provided over a cable system under federal law or under a state law that applies substantially the same definitions of "cable service" and "cable system" as federal law.

SECTION 16. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 17. The Revenue Laws Study Committee must review the effect Article 42 of Chapter 66, as enacted by this act, has on the following to determine if any changes to the law are needed and must report its findings to the 2009 Session of the North Carolina General Assembly:

(1) Competition in video programming services.

(2) The number of cable service subscribers, the price of cable service by service tier, and the technology used to deliver the service.

(3) The deployment of broadband in the State.

SECTION 18. This act becomes effective January 1, 2007. Sections 7 and 8 of this act apply to the distribution made within 75 days after March 31, 2007, for the quarter starting January 1, 2007.

HB 2047 (PCS): VIDEO SERVICE COMPETITION ACT

June 1, 2006

Executive Summary for the House Finance Meeting

- **Provides equal taxation of same service**
  - Defines video programming to include all programming comparable to television broadcast, regardless of provider
  - Repeals local authority to impose local franchise tax
  - Applies existing 7% State sales tax to video programming service
- **Promotes competition in video programming service**
  - Requires State franchising of cable service providers
  - Repeals local authority to award or renew a local cable franchise, effective January 1, 2007
- **Preserves local government revenue stream**
  - Distributes share of sales tax imposed on video programming to counties and cities
  - Distribution of video programming revenues based on the amount of cable franchise tax imposed during the first six months of fiscal year 06-07 PLUS any subscriber revenues imposed during the first six months of fiscal year 06-07. Subsequent annual distributions adjusted for population growth
- **Protects PEG Channels**
  - Provides $2 million for additional PEG support through direct distribution and through grants
  - Includes per subscriber revenue in local government distribution base and requires local governments that imposed a subscriber fee to use the amount of revenue derived from that fee for PEG channel operation and support
  - Sets number, service tier placement, and transmission quality of PEG channels
  - Provides mechanism to acquire additional PEG channels
  - Provides equipment assistance for transmitting PEG channel signals
- **Requires cable service provider to provide free basic service to local public buildings**
- **Preserves local regulation of rights-of-way**
- **Provides competitive neutrality**
  - Existing local franchises cannot be renewed
  - Opt out provision for cable service providers under existing local agreements when one or more households in the franchise area may be served by both the existing provider and the holder of a State-issued franchise
- **Prohibits discrimination**
  - Bill specifically prohibits discrimination of service based on income or race
  - Violation of the law declared an unfair or deceptive trade practice
- **Preserves service standards**
  - Franchisee must comply with customer service standards and emergency alert requirements of FCC
  - Consumer Protection Division of the Attorney General's Office will receive and respond to complaints

HOUSE BILL 2047:
Video Service Competition Act

BILL ANALYSIS

Committee:	House Finance	**Date:**	May 29, 2006
Introduced by:	Reps. Carney, Luebke, McComas, Wainwright	**Summary by:**	Cindy Avrette Committee Counsel
Version:	PCS to First Edition H2047-CSRB		

SUMMARY: House Bill 2047 would provide equal taxation of video programming services regardless of how the service is delivered and it would replace locally negotiated franchises of cable service provided over a cable system with a State-issued franchise. The PCS for the bill addresses various issues and concerns raised by parties interested in the bill. The bill would become effective January 1, 2007.

CURRENT LAW: North Carolina began taxing communication services when the technologies enabling the services were separate and distinct technologies and the providers of the services were separate and distinct taxpayers. Over the past several years, the technology used to provide these services has converged so that the line between the services is no longer separate and distinct. The Current Operations and Capital Improvements Appropriations Act of 2005 directed the Revenue Laws Study Committee to study the equity of taxation of providers of cable service, direct-to-home satellite service, satellite digital audio radio service, video programming service, and data service.

The Revenue Laws Study Committee spent a considerable amount of time on this issue.[1] The Committee found that the State taxes these services based upon who provides the service rather than the service itself. Despite the General Assembly's repeated attempts to provide tax equity among these providers, it is debatable whether that has been accomplished:

- The State imposes a 7% State sales tax on telecommunication services and it earmarks a percentage of the revenues to cities. The amount each city receives is based upon a per capita statutory formula. State law prohibits counties and cities from imposing local taxes on this service.
- The State imposes a 7% State sales tax on direct-to-home satellite service. Federal law prohibits a local tax on this service and it prohibits local regulation of this service. The tax revenue is not shared with local governments.
- The State imposes a 4.5% State sales tax and a 2.5% local sales tax on digital audio radio service.
- The State imposes a 7% State sales tax on cable services, with a credit equal to the amount of local franchise tax paid on the service. Counties and cities may impose a local franchise tax on this service; the tax may not exceed 5% of gross receipts. Cable service has been subject to local regulation since 1973. The local regulation of cable services varies from county to county and from city to city, depending on the terms of the locally negotiated agreements. The definition of

[1] The Revenue Laws Study Committee staff met separately with representatives of the cable industry, the telephone industry, the cable administrators, and the counties and cities. It also held a series of four meetings with the all the affected parties and solicited comments from the parties on numerous occasions. The staff prepared a survey given to all the local governments in the State to determine their franchise fee collections and other nonmonetary contributions received in accordance with their cable franchise agreements.

'gross receipts' may also vary from agreement to agreement. The cable boxes rented to customers is subject to the State and local sales tax. The gross receipts from the rental of these boxes may also be included in the company's gross receipts for local franchise tax purposes, depending upon how the term is defined in the local agreement.

The Revenue Laws Study Committee acknowledged that the method of taxation should not provide one provider of a service with a competitive advantage over another. The Committee expressed a goal to establish a method of taxation that applies equally to the same service, regardless of who provides it. The Committee established the following principles:

- Equal taxation of the same service.
- A tax system that is easy to administer.
- A tax and regulatory system that does not impede competition.
- Equal compensation to cities for the use of their public rights-of-way.
- PEG channels service a public purpose and should be supported.

Based upon those principles, it desired a bill that met the following goals:

- Applies the principles stated above.
- Contains no tax or fee increase.
- Preserves local government revenue stream.
- Promotes competition in the marketplace.
- Promotes deployment of broadband as a basic communication tool.

North Carolina is not alone in grappling with the issue of how to tax and regulate telecommunications and video programming services. Congress as well as other states is considering legislation on this issue. At this time, at least four states have enacted legislation changing the regulation and taxation of telecommunications and video programming services and at least eight other states have legislation pending on the issue.

BILL ANALYSIS: House Bill 2047, *Video Service Competition Act,* establishes uniform taxes for video programming services and seeks to promote consumer choice. It establishes equal taxation of the same service by applying the State 7% sales tax to all video programming services, repealing the local authority to impose a local franchise tax, and repealing the sales tax credit allowed to cable companies for local franchise tax paid. It preserves the local government revenue stream by distributing part of the sales tax revenues from telecommunications and video programming services to the counties and cities. The distribution formula is based upon the amount of cable franchise tax imposed during the first six months of fiscal year 06-07 plus any subscriber fees imposed during that same period.

The bill promotes competition by providing a State franchise process, in lieu of the current locally negotiated franchise agreements. It seeks to ensure competitive neutrality by allowing cable providers to opt-out of existing local agreements when one or more households in the franchise area may be served by both the existing provider and the holder of a State-issued franchise. The bill specifically prohibits discrimination in the provision of video programming services and declares a violation of this law to be an unfair or deceptive trade practice. The holder of a State-issued franchise must comply with customer service and emergency alert requirements established by the Federal Communications Commission. The

bill designates the Consumer Protection Division of the Attorney General's Office as the State agency to receive customer complaints regarding video programming services.

The bill preserves local regulation of public rights-of-way and provides for PEG channel support and growth. The bill requires local governments that imposed subscriber fees to use a portion of the amount of revenue distributed to it for PEG channel operation and support. In addition to this mandated funding, the bill provides $2 million for supplemental PEG support through direct appropriation for PEG channel support and operation and through grants. The bill provides that existing franchise agreements will determine the number, service tier placement, and transmission quality required of PEG channels under a State-issued franchise. In the absence of an existing agreement, the number of PEG channels a county or city may have is determined by the area's population. A local entity may acquire additional PEG channels, with the maximum number of channels set at seven. The bill also requires cable service providers to provide free basic service to local public buildings.

Section-by-section analysis of the bill:

Section 1 of the bill replaces the authorization to counties and cities to award a franchise for cable service with a State franchising authority, effective January 1, 2007. The bill provides that a county or city may not award or renew a franchise for cable service after this date. The bill designates the Secretary of State as the exclusive franchising authority in the State for cable service provided over a cable system. The terms 'cable service' and 'cable system' track the definitions in federal law. The bill would require the franchising of cable service that is required to be franchised under federal law. The bill does not expand the services that need to be franchised beyond those currently required to be franchised under federal law.

State issued franchise. The State franchise process is one of notice, not regulation. To receive a State-issued franchise, a person must file a notice of franchise with the Secretary of State and pay a fee of $125. A person who files a notice of franchise with the Secretary must begin providing cable service within 120 days after the notice is filed. If service is not provided within this period, the notice of franchise terminates 130 days after it was filed. The notice of franchise must include the applicant's name and principal place of business, a description and map of the area to be served, a list of each county and city in which the described service area is located, and a schedule indicating when service is expected to be offered in the service area. A person who fails to file a notice of franchise is subject to a civil penalty of $250 a day until the document is filed.

Notice of Service. Once cable service is provided, the holder of a State-issued franchise must file a notice of service with the Secretary within 10 days after the cable service begins. A person who fails to file a notice of service is subject to a civil penalty of $250 a day until the document is filed. The notice of service must include the effective date of the notice of franchise for that area, a description and map of the service area, and a statement that cable service has begun in the service area.

Annual Service Report. The holder of a State-issued franchise must also file an annual service report on or before July 31 of each year and pay a fee of $20. A person who fails to file an annual service report is subject to a civil penalty of $250 a day until the document is filed. The annual service report must include all of the following:

- The effective date of a notice of franchise for that area.
- A description and map of the service area.
- The approximate number of households in the service area.
- A description and map of the households passed in the service area as of July 1.

- The percentage of households passed in the service area as of July 1.
- The percentage of households passed in the service area as of July 1 of any preceding year for which a report was required.
- A report indicating the extent to which the holder has met the customer service requirements.
- A schedule indicating when service is expected to be offered in the service area, to the extent the schedule differs from one included in the notice of franchise or in a report previously submitted, and an explanation of the reason for the new schedule.

Existing agreements. The State franchising authority does not affect a local franchise agreement that was awarded by a county or city and is in effect on January 1, 2007, except as follows:

- Effective January 1, 2007, gross revenue used to calculate the payment of a local franchise tax does not include gross receipts from cable service subject to the State sales tax.
- A local franchise agreement may be terminated when a notice of service indicates that one or more households in the franchise area of the existing agreement are passed by both the cable provider under the existing agreement and the holder of a State-issued franchise.

Termination of existing agreements. To terminate an existing agreement, a cable service provider must file a notice of termination with the affected county or city and file a notice of franchise with the Secretary of State. A notice of termination becomes effective at the end of a month. A termination of an existing agreement ends the obligations under the agreement and under any local cable regulatory ordinance as of the effective date of the termination.

Service standards and requirements. The bill specifically prohibits discrimination in the provision of the cable service. A violation of the law is considered an unfair and deceptive trade practice. In determining whether a cable service provider has violated the law, the following factors may be considered: the length of time since the provider filed the notice of service for the area, the cost of providing service to an area, technological impediments to providing service to an area, the inability to obtain access to property required to provide service to an area, and competitive pressure to respond to service offered by another cable provider. The information in the annual service reports may be used to help determine whether a violation of the law has occurred.

A cable service provider must comply with the customer service requirements and emergency alert requirements established by the Federal Communications Commission. The Consumer Protection Division of the Attorney General's Office is designated as the State agency to receive and respond to consumer complaints. A cable service provider who fails to resolve a customer complaint raised by the Division in a reasonable time and manner is subject to a civil penalty of $100 a day until the complaint is resolved.

PEG channels. The bill requires a cable service provider operating under a State-issued franchise to include the transmission of PEG channels. A county or city may make a written request for PEG channel capacity and the cable service provider must provide the requested capacity within 120 days after it receives the request. If the area is included in both the franchise area of an existing agreement and the service area of a State-issued franchise, then the terms of the existing agreement as of the filing date of the notice of franchise determine the number, service tier placement, and transmission quality of the initial PEG channels required under the State-issued franchise. If no existing agreement includes any part of the service area of a State-issued franchise, then the number of PEG channels required under the State-issued franchise depends upon the population of the city in which part or all of the service area is located. If the city's population is at least 50,000, the provider must provide up to three PEG channels. If

the city's population is less than 50,000, the provider must provide up to two PEG channels. The PEG channels must be placed on a basic service tier and the transmission quality must be equivalent to those of the closest city covered by an existing agreement. In no event may a city or county have fewer PEG channels than would be allowed to an area that is not covered under an existing agreement.

The maximum number of PEG channels a cable service provider must provide to a county or city is seven. If a county or city does not have seven PEG channels, including the initial PEG channels, it may request additional channels. The additional channels may be provided on any service tier and the transmission quality of the additional channels must be at least equivalent to the transmission quality of the other channels provided. The PEG channels operated by a county or city must meet the following programming requirements in order for the county or city to obtain additional channels:

- All of the PEG channels must have scheduled programming for at least 80% of the time for at least 8 hours a day.
- The programming content of each PEG channel must not repeat more than 15% of the programming content on any of the other PEG channels.
- No more than 15% of the programming content on any PEG channel may be character-generated programming.

A cable service provider is responsible only for the transmission of a PEG channel. A county or city to which the PEG channel is provided is responsible for the operation and content of the channel.

PEG channel grants. The bill establishes the PEG Channel Fund as an interest-bearing special revenue fund. The purpose of the Fund is to provide matching grants to counties and cities for PEG channel support. The e-NC Authority administers the Fund.[2] A grant may only be used for capital expenditures necessary to provide PEG channels. The size of a grant may not exceed $20,000 and an applicant may receive no more than one grant per fiscal year. The applicant must match the grant on a dollar-for-dollar basis. The Authority must publish an annual report on the grants awarded from the Fund.

Service to public buildings. At the written request of a county or city, a cable service provider operating under a State-issued franchise must provide cable service without charge to a public building located within 125 feet of the provider's cable system. The required service is the basic, or lowest-priced, service the provider offers to customers. Only one service outlet is required for a building. A public building is a building used as a public school, a charter school, a library, or a function of the county or city.

Sections 2 and 3 of the bill would apply the State sales tax equally to all video programming services, regardless of who provides the service. Section 2 defines the term 'video programming' to be programming provided by, or generally considered comparable to programming provided by, a television broadcast station, regardless of the method of delivery. The term is broader than 'cable service provided over a cable system'. It would include cable services offered over private rights-of-way as well as those offered over public rights-of-way. Section 3 imposes the State's 7% sales tax on the gross receipts derived from providing video programming to a subscriber in this State.[3]

Sections 4 through 6 of the bill would make technical and conforming changes to the provisions governing bundled transactions.

---

[2] The e-NC Authority is charged with managing and promoting high-speed broadband Internet access.

[3] Although the term video programming includes broadcast services, the provision of these services would not be taxed unless the provider sells the service to subscribers and thus realizes gross receipts from the provision of the services.

Sections 7 and 8 of the bill would distribute a share of the sales tax revenues imposed on video programming to counties and cities. The revenue distributed is local revenue, not a State expenditure. Therefore, the Governor may not reduce or withhold the distribution.

Section 7 would increase the amount of the sales tax revenue derived from telecommunication services distributed to cities and counties. Section 8 would distribute the following portion of the gross receipts derived from video programming to counties and cities: 22.61% of the net proceeds collected on video programming, other than on direct-to-home services and 37% of the net proceeds collected on direct-to-home satellite service.[4] The distributions would be made quarterly.

The amount distributed would be allocated as follows:

- Two million dollars ($2,000,000) a year would be distributed as supplement PEG channel support. A portion of this amount will be distributed to counties and cities with qualifying PEG channels.[5] The amount per qualifying PEG channel would be $25,000. A county or city could not receive supplemental PEG channel support for more than three PEG channels. The amount distributed to a county or city as supplemental PEG channel support must be used by it for the operation and support of PEG channels. If the amount to be distributed for qualifying PEG channels in a fiscal year is less than $2,000,000, the Secretary must credit the excess amount to the PEG Channel Fund to be used for matching local grants for PEG channel support.
- The remainder of the revenues to be distributed would be allocated between the counties and cities on a proportional basis. The proportionate share of a county or city is the base amount for the county or city compared to the base amount for all counties and cities. The base amount for a county or city that did not impose a cable franchise tax before July 1, 2006, would be $2 times the most recent annual population estimate for that county or city. The population of the county would be the population of its unincorporated areas plus the population of an ineligible city in the county. The base amount for a county or city that imposed a cable franchise tax before July 1, 2006, is the amount of cable franchise tax and subscriber fee revenue the county or city certifies to the Secretary it imposed during the first six months of fiscal year 06-07. For subsequent fiscal years, the amount each county or city receives would be adjusted based upon its percentage change in population.

A county or city that imposed subscriber fee revenue must use a portion of the amount distributed to it for PEG channel operation and support. The amount it must use for this purpose is two times the amount of revenue it certified to the Secretary it imposed as subscriber fees during the first six months of fiscal year 06-07. The remainder of the money distributed to counties and cities may be used for any public purpose.

Section 9 would repeal the credit against the State sales tax on cable services for local franchise tax paid since the local franchise tax is repealed in Section 13.

Section 10 would repeal the county's authority to franchise cable television services.

Section 11 would repeal the county's authority to impose a franchise tax on cable services.

Section 12 would prohibit a city from imposing a tax on video programming services.

Section 13 would repeal the city's authority to impose a franchise tax on cable services.

---

[4] This percentage distribution from satellite TV services mirrors the 2.5% local sales tax on satellite radio services.
[5] A 'qualifying PEG channel' is a channel that meets the programming requirements under G.S. 66-357(d).

Section 14 would clarify that a city may not impose a fee or charge for use of the public right-of-way unless the fee or charge applies uniformly to all non-municipal users of the public right-of-way.

Section 15 would repeal the city's authority to franchise cable television services.

Section 16 would require a county or city desiring to receive a distribution for supplemental PEG channel support under G.S. 105-164.44I(c) to certify to the Secretary of Revenue by January 15, 2007, the number of qualifying PEG channels it operates.

Section 17 recognizes that the staffing needs of the Consumer Protection Division of the Attorney General's Office may change if this bill is enacted. However, the section also finds that the impact of this bill on the staffing needs of the Division is not clear. This section requests the Office of the Attorney General to monitor the number and type of cable service complaints it receives from customers and to determine whether the Division needs additional staff to fulfill the duty imposed by this bill on it. The Office of the Attorney General must make a report concerning its staffing needs to the Fiscal Research Division by April 1, 2007.

Section 18 would provide that an award of a State-issued franchise does not affect a determination of whether video programming provided by the holder of the franchise is considered cable service provided over a cable system under federal law.

Section 19 would provide that the provisions of this act are severable.

Section 20 would direct the Revenue Laws Study Committee to review the effects of this act on competition in video programming services, the number of cable service subscribers, the price of cable service by service tier, the technology used to deliver the service, and the deployment of broadband in the State. The Committee would see if any changes to the law are necessary and would report its findings and recommendations to the 2009 General Assembly.

EFFECTIVE DATE: The bill becomes effective January 1, 2007.

H2047e1-SMRB-CSRB

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

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

DATE: May 31, 2006

TO: Representatives Luebke, McComas, Wainwright, and Carney

FROM: Brenna Erford
Fiscal Research Division

RE: House Bill 2047 (Proposed Committee Substitute to First Edition)

FISCAL IMPACT

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

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES:					
General Fund	No Impact to General Fund				
Local governments	Possible net gain up to $3.3 million; see Assumptions & Methodology				
EXPENDITURES:	See Assumptions & Methodology				
POSITIONS (cumulative):	See Assumptions & Methodology				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Department of Revenue; Consumer Protection Division of the NC Office of the Attorney General; NC Secretary of State; NC Department of Revenue; e-NC Authority; local governments

EFFECTIVE DATE: January 1, 2007

BILL SUMMARY: The Consumer Choice in Cable and Uniform Taxation of Video Programming Services Act:

- Establishes a statewide video service franchising process;
- Makes changes to the regulatory treatment of existing local cable franchises;
- Eliminates local governments' authority to assess and collect cable franchise fees;
- Replaces local revenues from franchise fees with a new distribution of shared sales tax collections from telecommunications, cable service, and satellite television service;
- Removes the state tax credit for franchise fees paid to local governments;
- Provides for a proportional tax distribution to local governments based on previous revenues from cable, including franchise fees and per subscriber charges;
- Provides for public, educational, and governmental (PEG) channel funding via several mechanisms;
- Designates the North Carolina Secretary of State as the exclusive statewide video service franchising authority;
- Designates the Consumer Protection Division of the North Carolina Office of the Attorney General as the agency responsible for handling consumer complaints.

This bill does not raise taxes on cable service, telecommunications, or home satellite television services. All these services remain subject to the general shared sales tax rate of 7%. However, this bill significantly alters the calculation of the local share of shared sales tax and creates an entirely new distribution method for the local share of shared sales tax collections. The bill does three things that significantly alter the composition of the local share:

- Local governments will no longer be able to assess and collect cable franchise fees. This revenue will be replaced by the local distribution scheme set forth in the bill. Under this proposal, local governments will receive a portion of sales tax collections from cable service equal to 22.61%, an increased portion of the existing telecommunications sales tax, and a share of sales tax collections on satellite television service.
- The tax credit equal to the amount of franchise fees paid to local governments created in 2005 is eliminated.
- Local governments will effectively receive a larger portion of state sales tax collections on telecommunications. This new portion will be equal to 7.23% of total telecommunications sales tax collections, which is equivalent to 22.61% of total sales tax collections for telecommunications less the local share already received pursuant to G.S. 105-164.44F according to Fiscal Research estimates.
- Local governments will be granted a share of sales tax collections from home satellite television service equal to 2.5% of the 7% general sales tax, or approximately 37% of sales tax collections.

ASSUMPTIONS AND METHODOLOGY: Fiscal Research estimates that all North Carolina local governments will be effectively held harmless by this change. The sum of the local shares of these three industries (approximately $65.3 million) is estimated to exceed actual aggregate local collections of cable franchise fees and per subscriber charges by approximately $3.3 million.

Current Law and Estimated Tax Collections by Industry

During the 2005 session, cable service, telecommunications, and home satellite television service were brought under the general state sales tax rate of 7%.

The chart below shows estimated total sales tax collections for cable service, telecommunications, and home satellite television service for FY 2005-06. These amounts have been adjusted to reflect the 2005 rate changes. The municipal share amount shows the amount received or collected by local governments under current law.

Estimated Sales Tax Collections by Industry and State/Local Share under Current Law			
	2005-06 Adjusted		
	Net collections	State share	Local share*
Telecommunications sales tax	395,714,195	334,850,718	60,863,477
Cable service**	91,350,000	26,100,000	65,250,000
Satellite	43,220,000	43,220,000	N/A
Total, all industries	530,284,195	404,170,718	126,113,477

*Local share reflects 18.03% of total telecommunications sales tax less the "freeze deduction" as required in G.S. 105-164.44F

**Net collections for cable have been estimated from municipal share. The local share ($65.3 million) reflects estimated total cable revenues collected directly by local governments, not by the state.

- For telecommunications, the $60.9 million local share is the 18.03% of telecommunications sales tax less a "freeze distribution" created under G.S. 105-164.44F. This portion of local share is not altered by this legislation.
- For cable service, the local share shown ($65.3 million) is the estimated amount of cable revenues assessed and collected by local governments in 2005. Currently this money is collected directly by local governments, primarily in the form of cable franchise fees. Under federal law, local government units can assess a franchise fee of up to 5% on a locally negotiated definition of gross revenues. This is also the estimated amount of the cable tax credit.
- Sales tax collections from home satellite television service are not currently shared with local governments.

The following sections outline the change in calculation of the local share of cable, telecommunications, and satellite sales tax collections as well as the change in distribution to local governments as it pertains to each industry.

Telecommunications

In 2005, the tax on telecommunications was increased from 6.0% to the general sales tax rate of 7.0%. The change was effective Oct. 1, 2005. Under G.S. 105-164.44F local governments receive a per capita distribution of 18.03% of sales tax collections on telecommunications service less a "freeze deduction" of $2,620,948 on a quarterly basis. This legislation does not alter this portion of the local government share of sales tax on telecommunications. Under this bill, local governments will continue to receive a distribution of total sales tax collections on telecommunications pursuant to G.S. 105-164.44F, plus an additional share of collections equal to 7.23% of gross sales tax collections on telecommunications. This additional share of collections is estimated at $28.6 million based on 2005-06 estimated collections.

Cable Service

Effective January 1, 2006, the general sales tax rate of 7% was applied to cable service, which had previously only been taxed at the local level. Taxpayers also receive an approximate 5% credit against this tax for local cable franchise taxes paid,[1] which is removed by the bill.

At this time, the two months of collections data available for this tax expenditure are not sufficient to estimate the credit's actual cost, so this memo assumes an estimated $65.3 million for the cost of the cable tax credit.[2] However, survey research conducted by the Fiscal Research Division suggests that the actual amount of cable franchise fees and per subscriber charges collected by North Carolina local governments is approximately $62 million, which suggests that local governments may gain up to $3.3 million in new money from this legislation.

The local share of cable sales tax collections under the distribution established by this bill is estimated at $20.7 million based on 2005-06 estimated collections.

Satellite

The tax on home satellite television service was increased from 5.0% to 7.0% effective Oct. 1, 2005. Currently, all collections of this tax go to the General Fund. Under this legislation, 37% (or 2.5% of the 7.0% general sales tax rate) of satellite tax collections would be shared with local governments.

Based on early Department of Revenue data, satellite tax collections are exhibiting a rapid rate of growth, especially in relation to collections from cable service. This estimate for satellite uses a conservative annual growth rate of 8%.

Fiscal Research estimates that sales tax collections for satellite will be approximately $43.2 million for FY 2005-06. The 37% local share would be $16.0 million based on 2005-06 estimated collections.

Proposed Local Share of Sales Tax Collections by Industry

The chart below illustrates the local share of sales tax collections by industry. **This local share calculation is intended to hold local governments whole with the elimination of local franchise fees and to supply local governments with funds for PEG channel support.** The $65.3 million local share calculated through this distribution equals the estimated 2005 cable franchise fee revenues that would be foregone under this legislation.

---

[1] Federal law caps local franchise taxes at 5% of gross revenues, suggesting 2% of the 7% state sales tax goes to the state. Fiscal Research Division survey research suggests that not all North Carolina local governments with cable franchises assess franchise fees at the maximum 5% rate, and that the actual value of the tax credit may be somewhat less than 5% of cable's total sales tax liability.

[2] The cost of the cable tax credit was estimated at $65 million in the 2005 Tax Expenditure Report published by the North Carolina Department of Revenue

Proposed Local Share of Sales Tax Collections by Industry	
2005-06 Adjusted	
Industry	Local share
Telecommunications***	28,607,502
Cable	20,654,235
Subtotal	*49,261,737*
Satellite	15,991,400
Total	**65,253,137**

Distribution of Sales Tax to Local Governments

Under this bill, the combined 7.23% of sales tax collections on telecommunications, 22.61% of state sales tax collections on cable service and 37% of sales tax collections on home satellite television service would be distributed to North Carolina local governments on a proportional basis. The proportionate share for each local government is calculated by dividing a local government's actual collections, including actual franchise fee collections and any per subscriber charges for PEG support, by the total of all local government cable revenues. The base amount of a county or city that imposed a cable franchise tax before July 1, 2006, is the amount of cable franchise tax and subscriber fee revenue the county or city certifies to the Secretary was imposed during the first six months of FY 2006-07 (July 1, 2006 through January 1, 2007). The purpose of this time period is to capture the effect of franchise fee rate increases enacted by local governments for the 2006-07 fiscal year. The bill also provides that counties or cities that did not impose a cable franchise fee before July 1, 2006, are entitled to a share equal to $2.00 times the most recent population estimate for the city or county in question. Fiscal Research estimates that sixty-five cities and two counties do not currently impose a franchise fee. The total population of those sixty-seven local governments is approximately $155,780, which at a $2.00 pro rate share creates a $311,560 addition into the distribution.[3]

In subsequent years, the proportionate share for each municipality will be recalculated to reflect per capita growth. The distribution would be effective January 1, 2007.

Based on available data, Fiscal Research believes that under this distribution scheme no municipality will receive less revenue than they would have received

Public, Educational, and Governmental (PEG) Channel Support

This bill contains three mechanisms to provide financial support for public, educational, and governmental (PEG) channels. Local governments are required to certify revenues received from franchise fees and from per subscriber charges to the Department of Revenue. If a local government has been receiving per subscriber charges for PEG support, a portion of the revenue that local government receives from the Department of Revenue via the distribution created in this bill equal to the amount of per subscriber fees collected must be used for PEG channel support.

[3] This change does not reduce the $2 million available for PEG funding via lump-sum payments and grants, but it slightly reduces the residual unreserved amount that will be available for distribution directly to local governments.

In addition, the bill allows local governments that operate PEG channels providing local programming to collect $25,000 per channel, up to 3 channels, per year in the form of four quarterly installments of $6,250. These funds are to be deducted from the total local share of sales tax collections before the local distribution formula is applied. The bill caps the amount of annual PEG support to local governments at $2 million. Reliable data on the number of qualifying PEG channels in North Carolina is not available, but based on discussions with public programming interest groups, this memo assumes there are 36 PEG channels currently operating in North Carolina that would qualify for this funding. In total, the impact of this provision is estimated at $900,000 annually.

The bill also creates the PEG Grant Fund. Any funds **not** disbursed to local governments for PEG support ($25,000 per qualifying PEG channel), up to the $2 million limit, are to be deposited in the PEG Grant Fund for the purpose of making grants to local governments to fund capital expenditures for PEG channels. The e-NC Authority is responsible for administering the fund and awarding grants subject to the following limitations:

- The size of a grant may not exceed $20,000
- The local government applicant must match the grant on a dollar-for-dollar basis
- The grant may only be used for capital expenditures necessary to provide PEG channels
- An applicant may only receive one grant per year

In addition, the e-NC Authority must publish an annual report on grants awarded. The report must list each grant recipient, the amount of the grant, and the purpose of the grant.

The chart below provides detail on the total amount of revenue set aside for PEG channel support pursuant to this legislation. **The per subscriber fee portion of these funds ($1,195,888) is included in the proportional distribution; therefore PEG funding does not utilize the entire $3.3 million possible gain to local governments.**

Total funds to local governments restricted for PEG support		
Per subscriber fees	$	1,195,888
PEG support funding ($25,000 per qualifying channel)	$	900,000
Grants from PEG Grant Fund	$	1,100,000
Total PEG funding	**$**	**3,195,888**

State Franchising Authority

The Secretary of State is named as the exclusive state franchising authority for cable service provided over a cable system. Applicants must file a notice of franchise with the Secretary and pay a filing fee equal to the filing fee for articles of incorporation, currently $125. A person who files a notice of franchise is required to begin providing service in the designated area within 120 days of filing. In addition, a person providing service must submit an annual service report on or before July 31 of each year. A person who fails to file a notice of franchise, a notice of service, or an annual service report is subject to a civil penalty of $250 per day payable to the Secretary, clear proceeds of which must be remitted to the Civil Penalty and Forfeiture Fund.

Consumer Complaints

The Consumer Protection Division of the North Carolina Office of the Attorney General is named as the agency responsible for addressing consumer complaints. At this time, Fiscal Research does not have any data available on the cost of this change or any positions that may be requested as a result of this change.

Conclusion

The chart below contrasts current law with the proposed tax changes in this bill and illustrates how the total shared sales tax revenue to both the state and local governments is held the same.

Comparison of State and Local Share under Current and Proposed Law						
	(in millions)					
	Current law		**Proposed**		**Change**	
	State	Local	State	Local	State	Local
Telecommunications	334.8	60.9	306.2	89.5	(28.6)	28.6
Cable service	26.1	65.3	70.7	20.7	44.6	(44.6)
Satellite	43.2	-	27.2	16.0	(16.0)	16.0
Total	**404.1**	**126.2**	**404.1**	**126.2**	-	-

SOURCES OF DATA: North Carolina Department of Revenue, North Carolina Fiscal Research Division, North Carolina State Data Center, Federal Communications Commission, U.S. Census Bureau, North Carolina Utilities Commission

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Brenna Erford

APPROVED BY:

DATE:

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 2047*

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

H2047-ARB-79 [v.6]

Date June 6 ,2006

Comm. Sub. [NO]
Amends Title [NO]
H2047-CSRBx-48

Representative Wainwright

moves to amend the bill on page 2, line 17 by rewriting the line to read:
"amount set in G.S. 57C-1-22 for filing articles of organization.";

And on page 2, line 20, by rewriting the line to read:
"(1) The applicant's name, principal place of business, mailing address, physical address, telephone number, and e-mail address.";

And on page 3, lines 32 and 33, by rewriting the lines to read:
"area described in the document and to the registered agent of any cable service provider that is providing cable service under an existing agreement in the service area described in the document.

The provisions of Article 2 of Chapter 55D of the General Statutes apply to the submission of a document under this Article. A document filed under this Article is a public record as defined in G.S. 132-1. The Secretary must post a document filed under this Article on its Internet website or indicate on its Internet website that the document has been filed and is available for inspection.";

And on page 3, lines 38 through 43, by rewriting the lines to read:
"(b) Forfeiture. – A person who offers cable service over a cable system without filing a notice of franchise or a notice of service as required by this Article is subject to forfeiture of the revenue received during the period of noncompliance from subscribers to the cable service. This forfeiture does not affect the liability of the cable service provider for sales tax due under G.S. 105-164.4 on cable service. A cable service provider whose area includes the area in which a person is providing cable service without complying with the notice of franchise and notice of service requirements may

bring a civil action for forfeiture. The amount required to be forfeited in the action must be remitted to the Civil Penalty and Forfeiture Fund established in G.S. 115C-457.2.";

And on page 5, lines 5 through 9, by rewriting the lines to read:
"Office is designated as the State agency to receive and respond to customer complaints that the customer's cable service provider has failed to comply with the federal customer service requirements or the terms and conditions of the provider's agreement with the customer. To resolve one of these complaints, the Attorney General's Office may compel a cable service provider to comply with the federal customer service requirements and the terms and conditions of the provider's agreement with the customer and may assess a civil penalty on the cable service provider if the provider fails to address in a timely and reasonable manner a customer complaint raised by the Consumer Protection Division. The amount of the penalty is two hundred fifty dollars ($250.00) a day until the cable service provider complies with the customer service requirement or contract term at issue in the complaint. The Division may not impose a penalty under this subsection unless it has ";

And on page 5, lines 15 through 22, by rewriting the lines to read:
"include the following statement on the customer's bill: "If you have a complaint about your cable service, you should first contact customer service at the following telephone number: (insert the cable service provider's customer service telephone number). If the cable service provider does not satisfactorily resolve your complaint, contact the Consumer Protection Division of the Attorney General's Office of the State of North Carolina at 9001 Mail Service Center, Raleigh, NC 27699-9001 or at http://www.ncdoj.com.";

And on page 5, lines 36 and 39, and page 6, line 4, by deleting "January 1, 2007," and substituting "July 1, 2006,";

And on page 6, line 14, by adding the following at the end of that line to read:
"Each county and city whose PEG channels are served by the same cable system headend must cooperate with each other and with the cable system provider in sharing the capacity needed to provide the PEG channels.";

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 2047*

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

H2047-ARB-79 [v.6]

And on page 7, line 19, by adding the following sentence at the beginning of that line to read:

"The terms include compensation for costs incurred in interconnecting.";

And on page 8, line 13, by rewriting the line to read:
"apply to service provided to a residential retail customer apply to the service provided to the public";

And on page 8, line 15, by rewriting the line to read:
"not required to provide inside wiring and is not required to provide service that conflicts with restrictions that apply in a program licensing agreement or another contract. A public building is a building used as".

SIGNED Truman Rainwright
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 2047*

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

H2047-ARB-80 [v.1]

Date Jan 6 .2006

Comm. Sub. [NO]
Amends Title [NO]
H2047-CSRBx-48

Representative Glazier

moves to amend the bill on page 5, line 3, by adding the following at the end of that line to read:

"A cable service provider who fails to comply with the federal customer service requirements and the terms and conditions of the provider's agreement to the customer commits an unfair and deceptive trade practice under G.S. 75-1.1. In addition to the remedies provided in Article 1 of Chapter 75 of the General Statutes, the court may terminate the provider's State franchise if the provider is found to have violated G.S. 75-1.1."

SIGNED _____
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. PCS-RBx-48

H. B. No. 2047 DATE June 6, 2006

S. B. No. _____ Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE RBx-48

(Rep.) Carney
(Sen.)

1 moves to amend the bill on page 7, line 44

2 ( ) WHICH CHANGES THE TITLE

3 by substituting the phrase "twenty-five

4 thousand dollars ($25,000)" for the

5 phrase "twenty thousand dollars ($20,000)"

6

7

9

10

11

12

13

14

15

16

17

18

19

SIGNED Ruby Carney

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 2047*

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

H2047-ARB-63 [v.2]

Date June 6 ,2006

Comm. Sub. [NO]
Amends Title [NO]
H2047-CSRBx-48

Representative ROSS

moves to amend the bill on page 5, lines 3 and 4, by inserting between those lines the following:

"(b1) Additional Service Standards. – The following customer service protections shall be in effect where not exceeded by local government or Federal Communication Commission Customer Service Obligations for cable service providers. A local government may enforce the customer service standards set forth in this section against cable service providers.

(1) Service Center. – The cable service provider must locate at least one customer service center or business office (service center) in each municipality in the service area. The service center location, business hours and telephone, fax and e-mail contact information shall be printed prominently on all billing statements. A provider must maintain local voice and fax telephone numbers and a customer service e-mail address for service and repair requests and billing inquiries.

(2) Photo Identification Required. – All officers, agents, customer service representatives (CSR) and employees of the cable service provider, its contractors and subcontractors in personal contact with the customer shall have a visible identification card with their name and photograph and shall orally identify themselves upon first contact with the customer. For failure to comply, a $25.00 credit shall be awarded to the customer.

(3) Minimum Compensation to Customer for Noncompliance

a. Responsiveness – Cable service provider will guarantee seven day residential installation and service. A provider must provide

cable service to its customers within seven business days following order placement. If service is not installed within 7 business days, the cable operator will provide that customer free installation, or, if the installation fee has been waived for promotional reasons, then a one month service credit shall be awarded to the customer by the provider.

b. Underground Utility Drops – Underground cable drops shall be buried no less than six inches deep and work shall be completed in no more than two calendar weeks from the installation date provided to the customer. For failure to bury a cable drop, $100.00 shall be awarded to the customer by the Cable Service Provider.

c. Service Appointments. – Customers who have ordered cable service may choose any available two hour time block during regular business hours. For failure to comply, the cable service provider shall award a $25.00 credit to the customer.

1. The cable service provider may not cancel an appointment with a customer after 5:00 p.m. on the day before the scheduled appointment. For failure to comply, the provider must award a $25.00 credit to the customer.

2. If the cable service provider cannot keep an appointment for any reason, the provider must contact the customer prior to the end of the scheduled appointment and reschedule at the convenience of the customer. For failure to comply, the provider must award a $25.00 credit to the customer.

d. Cable Television Reception Difficulties and Service Problems

1. Distortion Free Cable Service. – Cable service provider must provide clear television reception. The value of one day's service for any portion of the day where picture quality fails to meet FCC standards or in the absence of FCC standards is considered unacceptable by the

Attorney General or local government, the provider must award a $25.00 credit to each customer in the effected area.

2. Prompt Repair. – If a customer experiences poor cable or audio reception due to a failure of the cable service provider's equipment, the provider must repair the problem no later than the next day, unless otherwise agreed to with the customer. Regardless, the value of one day's service for each day the problem remains uncorrected, shall be automatically awarded to each customer in the affected area by the provider.

e. Respectful Treatment of Property. – A cable service provider must replace any trees or shrubs damaged during any installation or repair. For failure to comply, the provider shall award the property owner a $25.00 credit plus reimbursement for the cost to restore the damaged area.

f. Property Restoration. – Cable service providers must restore any damaged property to the same condition it was before damage occurred. For failure to comply, the provider shall award to the property owner a $25.00 credit plus reimbursement for the cost to repair the damaged property.

(4) Customer Information. – Upon installation, or at a customer's request, a cable service provider must provide the following requested information and services:

a. Products and services offered.

b. Complete range of service options and prices.

c. Customer service standards.

d. Instruction on use of Cable Service and related terminal equipment, either company or subscriber owned.

e. Billing, collection and disconnect policies.

f. Customer privacy requirements.

g. Complaint procedure, containing the designated State agency to who the Complaints should be addressed.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 2047*

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

H2047-ARB-63 [v.2]

h. Use and availability of parental control/lock-out device.
i. Special services for customers with visual, hearing or mobility disabilities.
j. Days, times of operation, and locations of the service centers.
k. For each failure by a provider to provide a customer with the information in this subdivision, the provider shall award a $25.00 credit to the customer.

(5) Customer Privacy. – For any violation of privacy per Federal law or State Code by a cable service provider, the provider shall credit all affected customer accounts $150.00 per incident.

(6) Violation. – For any violation of the FCC's Customer Service Obligations or local government Customer Service Standards by the cable service provider, the provider shall award a $25.00 credit to the customer.

(7) Increase in Penalty Amount. – The award amounts in this subsection are subject to increases at the end of every five-year period as determined by the appropriate enforcement authority."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED ✓ TABLED _____

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☐ Committee Substitute for

HB 2047 . A BILL TO BE ENTITLED AN ACT TO PROMOTE CONSUMER CHOICE IN VIDEO SERVICE PROVIDERS AND TO ESTABLISH UNIFORM TAXES FOR VIDEO PROGRAMMING SERVICES.

☒ 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.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

ATTACHMENT 5

(Please type or use ballpoint pen)

EDITION No. perfecting

H. B. No. Amendment 42047 ~~ARB-73~~ (-1) Bartlett DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) McComas
Sen.)

1 moves to amend the bill on page 1, line 10
2 ( ) WHICH CHANGES THE TITLE
3 by adding to the following sentence at the end of that
4 line to read:
5
6 "~~This~~ "The bandwidth set aside is required by this section
7 applies only to ~~cable~~ cable television
8 digital transmissions and does not apply to
9 analog transmissions."
10
11
12
13
14
15
16
17
18
19

SIGNED ~~[illegible]~~ J. McComas

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

replaced 6/14 Or

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 2047*

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

H2047-ARB-73 [v.1]

Date June 6/14 ,2006

Comm. Sub. [NO]
Amends Title [NO]
H2047-CSRBx-48

Representative Bordsen

moves to amend the bill on page 5, line 25 through page 8, line 7, by rewriting the lines to read:

"**§ 66-357. Public Interest Set Aside and PEG channels.**

(a) Application. – This section establishes a five percent (5%) public interest set aside of system capacity to meet local needs and interests in exchange for the use of the public right-of-way. A five percent (5%) public interest set aside of system capacity shall be taken to mean five percent (5%) of the bandwidth at the point on the entire system that possesses the maximum bandwidth. This section applies to a person who provides cable service under a State-issued franchise. It does not apply to a person who provides cable service under an existing agreement.

(b) Local Request. – A county or city must make a written request to the Secretary to utilize the five percent (5%) public interest set aside The request must include a statement describing the county's or city's plan for the service requested and the impact on the five percent (5%) set aside. The cable service provider must provide the requested service within 120 days after it receives the written request from the Secretary.

(c) Existing Public Service Elements of Local Franchises and Provisions for Initial PEG Channels within the 5% Public Interest Set Aside. – If an area is included in both the franchise area of an existing agreement and the service area of a State-issued franchise, the terms of the existing agreement, as of the filing date on the notice of service for the State-issued franchise, determine the public service elements and required number, service tier placement, and transmission quality of initial PEG channels. The cable service provider must provide for existing public interest requirements and provide the number of PEG channels activated under those terms, giving equivalent service tier placement and transmission quality to those channels. The

cable service provider must maintain the same channel designation for a PEG channel unless the service area of the State-issued franchise includes PEG channels that are operated by different counties or cities and those PEG channels have the same channel designation. The expiration of an existing agreement after January 1, 2007, does not affect the requirements in this subsection.

If no existing agreement includes any part of the service area of a State-issued franchise, then the five percent (5%) public interest set aside may be used as ordered by the Secretary. The quality of such services must meet an acceptable standard as determined by the Secretary.

(d) Additional PEG Channels. – A county or city that does not have seven PEG channels, including the initial PEG channels, is eligible for an additional PEG channel if it meets the programming requirements in this subsection. A county or city that has seven PEG channels is not eligible for an additional channel.

A county or city that meets the programming requirements in this subsection may make a written request under subsection (b) of this section for an additional channel. The additional channel may be provided on any service tier. The transmission quality of the additional channel must be at least equivalent to the transmission quality of the other channels provided.

The PEG channels operated by a county or city must meet the following programming requirements for at least 120 continuous days in order for the county or city to obtain an additional channel:

(1) All of the PEG channels must have scheduled programming for at least eighty percent (80%) of the time for at least eight hours a day.

(2) The programming content of each of the PEG channels must not repeat more than fifteen percent (15%) of the programming content on any of the other PEG channels.

(3) No more than fifteen percent (15%) of the programming content on any of the PEG channels may be character-generated programming.

(e) Use of Channels. – If a county or city no longer provides any programming for transmission over a PEG channel it has activated, the channel may be reprogrammed at the cable service provider's discretion. A cable service provider must give at least 60 days notice to a county or city before it reprograms a PEG channel that is not used. The cable service provider must restore a previously lost PEG channel within 120 days of

the date a county or city certifies to the provider a schedule that demonstrates the channel will be used.

(f) Operation of Channels. – A cable service provider is responsible only for the transmission of a PEG channel. The county or city to which the PEG channel is provided is responsible for the operation and content of the channel. A county or city that provides content to a cable service provider for transmission on a PEG channel is considered to have authorized the provider to transmit the content throughout the provider's service area, regardless of whether part of the service area is outside the boundaries of the county or city.

All programming on a PEG channel must be noncommercial. A cable service provider may not brand content on a PEG channel with its logo, name, or other identifying marks. A cable service provider is not required to transmit content on a PEG channel that is branded with the logo, name, or other identifying marks of another cable service provider.

"**§ 66-358. Shared Transmission of Public Interest Services and PEG channels.**

(a) Service. – When a cable service provider operating under a State-issued franchise begins providing cable service in an area, the service must include the transmission of public interest services and PEG channels by one of the following methods:

(1) Interconnection with another cable system operated in its service area. A cable service provider operating in the same service area as a provider under a State-issued franchise must interconnect its cable system on reasonable and competitively neutral terms with the other provider's cable system and may not refuse to interconnect. Interconnection may be accomplished by direct cable, microwave link, satellite, or other method of connection.

(2) Transmission of the signal from each public interest service and PEG channel programmer's origination site, if the origination site is in the provider's service area.

(b) Signal. – All public interest services and PEG channel programming must meet the minimum recognized technical standards for the format used. If a service is programmed in a format a cable service provider cannot transmit without altering the transmission signal, then the cable service provider must do one of the following:

(1) Alter the transmission signal to make it compatible with the technology or protocol the cable service provider uses to deliver its cable service.

(2) Provide to the county or city equipment needed to alter the transmission signal to make it compatible with the technology or protocol the cable service provider uses to deliver its cable service.

"**§ 66-359. Public Interest and Programming Grants.**

(a) Public Interest and Programming Fund. – The Public Interest and PEG Channel Fund is created as an interest-bearing special revenue fund. It consists of revenue allocated to it under G.S. 105-164.44I(b) and any other revenues appropriated to it. The e-NC Authority, created under G.S. 143B-437.46, administer the Fund.

(b) Grants. – Any county, city, school or individual may apply to the e-NC Authority for a grant from the Public Interest and Programming Fund. In awarding grants from the Fund, the e-NC Authority must to the extent possible select applicants from all parts of the State based upon need. Grants from the Fund are subject to the following limitations:

(1) The size of a grant may not exceed twenty thousand dollars twenty thousand dollars ($20,000).

(2) The applicant shall match the grant on a dollar-for-dollar basis.

(3) The grant may be used only for capital expenditures necessary to provide Public interest services and programming.

(4) An applicant may receive no more than one grant per fiscal year.

(c) Reports. – The e-NC Authority must publish an annual report on grants awarded under this section. The report must list each grant recipient, the amount of the grant, and the purpose of the grant.".

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 2047*

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

H2047-ARB-73 [v.1]

SIGNED Alice L Bordsen
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED ✓ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 2047*

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

H2047-ARB-75 [v.2]

Date June 13 ,2006

Comm. Sub. [NO]
Amends Title [NO]
H2047-CSRBx-48

Representative Weiss

moves to amend the bill on page 4, lines 31 through 43, by rewriting those lines to read:

"In determining whether a cable service provider has violated this subsection with respect to a group of potential residential subscribers in a service area, the length of time since the provider filed the notice of service must be considered. If less than a year has elapsed since the notice of service was filed, it is conclusively presumed that a violation has not occurred.

The Office of the Attorney General may adopt rules to implement and enforce this subsection. The rules must permit any aggrieved person to file a customer complaint concerning cable service with the Attorney General's office and they must establish enforcement, including penalties, and ad judicatory review procedures consistent with the objectives of this section including the resolution of any complaint not later than 90 days after the complaint was filed, except for good cause shown.

In addition to any remedies provided by this Article, the Consumer Protection Division may use any appropriate order including an order directing a cable service provider to pay damages to a complaining party for a violation of this section and to enforce the provisions of this section."

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 2047*

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

H2047-ARB-75 [v.2]

SIGNED Jennifer Weiss
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED ✓ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

ATTACHMENT 8

EDITION No. _____

H. B. No. 2047

DATE June 13, 2016

S. B. No. _____

Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) Glazier
Sen.)

perfecting Amend-75 Weiss

to Amendment H2047-CSRBx-48

1 moves to amend the bill on page 1 of Amendment H2047-CSRBx-48, line S 13-16

2 ( ) WHICH CHANGES THE TITLE

3 by deleting those lines

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 2047*

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

H2047-ARB-87 [v.3]

Date June 13 ,2006

Comm. Sub. [YES]
Amends Title [NO]
H2047-CSRBx-48

Representative Holliman

moves to amend the bill on page on page 1, line 28, by adding the following new subdivision immediately after that line to read:

"(8) Video programming. – Defined in G.S. 105-164.3."

And on page 3, lines 38-43, as amended by Amendment No. 1, by rewriting those lines to read:

"(b) Forfeiture. – A person who offers cable service over a cable system without filing a notice of franchise or a notice of service as required by this Article is subject to forfeiture of the revenue received during the period of noncompliance from subscribers to the cable service in the area of noncompliance. Forfeiture does not apply to revenue received from cable service provided over a cable system in an area that is adjacent to a service area described in a notice of franchise and notice of service filed by that cable service provider under G.S. 66-352 if the provider obtains a State-issued franchise and files a notice of service that includes this area within 20 days after a civil action for forfeiture is filed. A forfeiture does not affect the liability of the cable service provider for sales tax due under G.S. 105-164.4 on cable service.

A cable service provider whose area includes the area in which a person is providing cable service without complying with the notice of franchise and notice of service requirements may bring a civil action for forfeiture. The amount required to be forfeited in the action must be remitted to the Civil Penalty and Forfeiture Fund established in G.S. 115C-457.2.";

And on page 4, lines 11-15, by rewriting those lines to read:

"the agreement in accordance with subsection (b) of this section in any of the following circumstances:

a. A notice of service filed under G.S. 66-352 indicates that one or more households in the franchise area of the existing agreement are passed by both the cable service provider under the existing agreement and the holder of a State-issued franchise.

b. As of January 1, 2007, a county or city has an existing agreement with more than one cable service provider and at least twenty-five percent (25%) of the households in the franchise areas of the existing agreements are passed by more than one cable service provider.

c. A person provides wireline competition in the franchise area of the existing agreement by offering video programming over wireline facilities to single family households by a method that does not require a franchise under this Article. A notice of termination filed on the basis of wireline competition must include evidence of the competition in providing video programming service, such as an advertisement announcing the availability of the service, the acceptance of an order for the service, and information on the provider's website about the availability of the service. A county or city is allowed 60 days to review the evidence. The effective date of the termination is tolled during this review period. At the end of this period, the termination proceeds unless the county or city has obtained an order enjoining the termination based on the cable service provider's failure to establish the existence of wireline competition in its franchise area.";

And on page 4, line 43, by rewriting the line to read:

"service provider or other provider of video programming.";

And on page 5, lines 4-13, by rewriting the lines to read:

"(c) Complaints. – The Consumer Protection Division of the Attorney General's Office is designated as the State agency to receive and respond to customer complaints concerning cable services. Persistent or repeated violations of the federal customer service requirements or the terms and conditions of the cable service provider's agreement with customers are considered unfair or deceptive acts or practices under G.S. 75-1.1.";

And on page 6, lines 27 and 28, by deleting the phrase 'for at least eighty percent (80%) of the time";

And on page 7, line 17, by rewriting the line to read:

"provider's cable system within 180 days after it receives a written request for";

And on page 14, lines 2-5, by rewriting the lines to read:

"~~surface:~~surface. A fee or charge associated with the exercise of this power must apply uniformly to all comparable activities by similarly situated users of the public right-of-way.";

And on page 15, line 5, by adding the following at the end of that line to read:

"A person who provides video programming may obtain a State-issued franchise under Article 42 of Chapter 66 of the General Statutes, as enacted by this act, and thereby become subject to that Article, regardless of whether the video programming the person provides is considered cable service provided under a cable system under that Article or under federal law.".

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 2047*

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

H2047-ARB-87 [v.3]

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 2047*

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

H2047-ARB-91 [v.1]

Date June 13 ,2006

Comm. Sub. [YES]
Amends Title [NO]
H2047-CSRBx-48

Representative Weiss

moves to amend the bill on page 14, lines 42 and 43, by inserting a new section between those lines to read:

"**SECTION 18.** The Consumer Protection Division of the Attorney General's Office must report to the Revenue Laws Study Committee on or before April 1 of each year, beginning April 1, 2008, on the following information concerning cable service complaints the Division has received from cable customers under G.S. 66-356:

(1) The number of customer complaints.
(2) The types of customer complaints.
(3) The different means of resolving customer complaints.";

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 2047*

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

H2047-ARB-91 [v.1]

1 And by renumbering the remaining sections accordingly.

SIGNED Jennifer Weiss
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 2047*

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

H2047-ARB-69 [v.3]

Date June 13 ,2006

Comm. Sub. [NO]
Amends Title [NO]
H2047-CSRBx-48

Representative Weiss

moves to amend the bill on page 5, lines 23 and 24, by rewriting the lines to read:

"(d) Service Area. – A person who provides cable service under a State-issued franchise must make cable service available to (i) all of the occupied residential dwelling units in each filed service area selected by the cable service provider within three years of the date of the grant of the State-issued franchise and (ii) 65% of the occupied residential dwelling units in the area in a municipality, and in the area of a county outside municipalities, in which the cable service provider has one or more filed service areas and telephone facilities, within seven years of the date of the grant of the State-issued franchise.

A cable service provider is not required to meet the service provisions of this subsection in the following circumstances:

(1) For periods of force majeure.

(2) For periods of delay resulting from the cable service provider's inability to obtain authority to access rights-of-way in the service area.

(3) In areas where developments or buildings are subject to claimed exclusive arrangements.

(4) In developments or buildings that the cable service provider cannot access under industry standard terms and conditions after good faith negotiation.

(5) In developments or buildings where the cable service provider is unable to provide cable service for technical reasons or that require facilities that are not available or cannot be deployed on a commercially reasonable basis.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 2047*

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

H2047-ARB-69 [v.3]

(6) In areas where it is not technically feasible to provide cable service due to the technology used by the cable service provider to provide cable service.

(7) In areas where the average occupied residential household density is less than 30 occupied residential dwelling units per mile as measured in strand footage from the nearest technically feasible point on the cable service provider's active cable system.

(8) When the cable service provider's prior service, payment, or theft of service history with a subscriber or potential subscriber has been unfavorable.".

SIGNED Jennifer Weiss
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED ✓ TABLED _____

ATTACHMENT 12

ROLL CALL VOTE

12 YES 22 NO = 34 (TOTAL) FAILED Date: 6/13/2006 HB# 2047 (PCS) SB# Amendment # Weiss (ARB-69)

HOUSE STANDING COMMITTEE ON FINANCE

MEMBER (last name)	YES	NO
Allen	X	
Blackwood		X
Blust		X
Bordsen	X	
Capps		X
Carney		X
Daughtridge		X
Dockham		X
England	X	
Faison		X
Fisher	X	
Folwell		X
Glazier	X	
Goforth		X
Hackney	X	
Harrell		X
Hill		X
Holliman		X
Insko		
Jones		
Lewis		X
Lucas	X	
McGee		X
Rayfield		X
Ross	X	
Underhill	X	
Vinson		X
Walend		X
Weiss	X	
Wiley		X
Womble	X	

MEMBER (last name)	YES	NO
Ex officio Members		
Cunningham		X
Eddins		
Co-Chairs		
Alexander		
Gibson	EXCUSED	
Howard		X
Luebke	X	
McComas		X
Wainwright		X

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 2047*

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

H2047-ARB-90 [v.2]

Date June 13 ,2006

Comm. Sub. [YES]
Amends Title [NO]
H2047-CSRBx-48

Representative Fisher

moves to amend the bill on page 7, line 36 through page 8, line 7, by rewriting the lines to read:

"(a) PEG Channel Fund. – The PEG Channel Fund is created as an interest-bearing special revenue fund. The Fund consists of one percent (1%) of the of the net proceeds of the taxes collected during the quarter on video programming under G.S. 105-164.4(a)(6) and one percent (1%) of the gross receipts derived from providing video programming to a subscriber in this State. The Secretary must transfer one percent (1%) of the net proceeds of the taxes collected during the quarter on video programming to the Fund within 75 days after the end of each quarter. A person providing video programming to a subscriber in this State must remit one percent (1%) of its gross receipts from providing video programming to the Secretary of Revenue. The remittance must be made quarterly and it may not be passed on to the subscribers. The Secretary of Revenue must transfer the amounts received from the persons providing video programming to the Fund. The e-NC Authority, created under G.S. 143B-437.46, administers the Fund.

(b) Use of Funds. – The e-NC Authority must distribute the money in the Fund to the counties and cities on a quarterly basis in accordance with subsection (c) of this section. The amount each county and city may receive is its per capital share of the amount to be distributed. The distribution must be made within 75 days after the end of each calendar quarter. A county or city may designate a PEG Access center to receive its distribution. The money distributed to a county or city under this section must be used by it for the operation and support of PEG channels.

(c) Distribution and Allocation. – To receive a distribution from the Fund, a county or city must operate one or more PEG channels. The funds will be distributed to qualifying counties and cities as follows:

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 2047*

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

H2047-ARB-90 [v.2]

(1) Sixty percent (60%) to Public Access.
(2) Twenty percent (20%) to Educational Access.
(3) Twenty percent (20%) to Government Access.

(d) Reserve Fund. – Revenue that is not distributed to a county or city under subsection (c) of this section because it does not operate a PEG channel must be credited to a reserve fund. The revenue in the reserve fund is available to a county or city that does not have an existing PEG channel. Any money distributed to a county or city under this subsection must be used to establish a PEG channel. If a county or city does not activate a PEG channel by January 1, 2010, the monies in the reserve fund may be distributed as capital grants to existing PEG providers."

And on page 9, line 43 page 10, line 2, by rewriting the lines to read:
"Secretary must distribute is the sum of the revenue listed in this subsection. The revenue to be distributed under this section consists of the";

And on page 10, lines 10 through 30, by deleting those lines.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED ✓ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 2047*

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

H2047-ARB-89 [v.2]

Date June 13 ,2006

Comm. Sub. [YES]
Amends Title [NO]
H2047-CSRBx-48

Representative Luebke

moves to amend the bill on page 15, lines 11 through 13, by rewriting the line to read:
"Article 42 of Chapter 66 of the General Statutes, as enacted by this act, has on the issues listed in this section to determine if any changes to the law are needed. The Committee must review the impact of this Article on these issues every two years and report its findings to the North Carolina General Assembly. The Committee must make its first report to the 2008 Session of the North Carolina General Assembly."

SIGNED P Luebke
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

North Carolina General Assembly

House Committee on Finance

Minutes

~

June 13, 2006 – 4:00 p.m.

The House Committee on Finance met on Tuesday, June 13, 2006 at 4:00 pm in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Gibson, Howard, Luebke, McComas and Wainwright; Vice-Chairs Daughtridge, Hill, Ross, Weiss, and Womble; and Representatives B. Allen, Blackwood, Blust, Bordsen, Capps, Carney, Dockham, England, Faison, Fisher, Folwell, Glazier, Goforth, Hackney, Harrell, Holliman, Insko, Jones, Lewis, McGee, Rayfield, Underhill, and Walend. Also present were Sergeant-at-Arms Mark Cone, Fred Hines, Marvin Lee, Jerald Perry, Frank Prevo, and Dusty Rhodes. Staff persons present included Cindy Avrette, Rodney Bizzell, David Crotts, Brenna Erford, Canaan Huie, Linda Millsaps, and Martha Walston. The Visitor Registration Sheets are attached and incorporated into these minutes as **attachment 1**.

Chairman Wainwright called the meeting to order at 4:13 pm and recognized the four (4) pages present: (1) Brittany Odom of Wake County, sponsored by Speaker Black; (2) Christie Anthony of Wake County, sponsored by Speaker Black; (3) Katie Cunningham of Moore County, sponsored by Speaker Black; and (4) Kemp Holler of Person County, sponsored by Speaker Black.

SB 1741 - MODIFY APPROPRIATIONS ACT OF 2005 was then placed before the members for consideration. Chairman Wainwright then recognized Representatives Luebke and Gibson who sent forth an amendment (see **attachment 2**). Prior to explanation and debate of the amendment, however, Chairman Wainwright announced that the Committee would only be considering the amendment offered by Representatives Luebke and Gibson. He stated that no other portions of the Appropriations bill would be considered by the Committee. He further informed the members that any amendments offered to perfect the amendment presented by Representatives Luebke and Gibson would be required to be revenue neutral.

Chairman Wainwright then recognized Representative Luebke to begin the explanation of the amendment. (Note: Throughout the explanation, Representatives Luebke and Gibson frequently referred to a financial spreadsheet prepared by Linda Millsaps of Fiscal Research – see **attachment 3**). Representative Luebke briefly noted that the bill lowers the sales tax one-quarter of one percent, effective January 1, 2007; lowers the income tax on the highest income earners one-eighth of one percent (from 8.25 % to 8.125 %), effective July 1, 2006; and provides for a small business health insurance tax credit not to exceed $200 per employee annually. Representative Gibson was then recognized to provide further explanation of the amendment. He informed the members that the amendment also extended the tax credit for aviation fuel to continue support for the Motorsports industry, provides for a small Research & Development Tax Deduction, and lifts the refund of sales tax currently provided to non-profits on the purchase of alcohol. He also noted

that the amendment incorporates the provisions of the 2006 Fee Bill (HB 2433), which was approved by the Committee at its earlier meeting at 8:30 a.m. Following this explanation, Representatives Luebke and Gibson then moved for the adoption of their amendment.

Chairman Wainwright then opened the floor to the Committee for debate. Representative Capps was recognized and asked were the early sunset of the sales tax was provided for in the amendment. Representative Luebke responded by stating that the provision was provided for on page 2, line 4 and page 3, line 23. Representative Lewis was recognized next and inquired as to the inability of employers to take a "double benefit" (i.e. both a credit and deduction) on the small business health insurance tax credit, located on page 7, line 11 of the amendment. Canaan Huie of Bill Drafting was recognized to respond and confirmed that Representative Lewis was correct – no double benefit could be taken under the bill. Chairman Wainwright then entertained some other general discussion on the amendment. Following this, Chairman Wainwright then called the motion to adopt the amendment to a vote, and the amendment was unanimously adopted.

Chairman Wainwright then accepted a motion from Representative Goforth that the Committee give SB 1741 a favorable report, as amended, with a recommendation that the bill be re-referred to the Committee on Pensions and Retirement. Seeing no further debate, the motion was called to a vote, and it carried with no known objection.

Having no further business before the Committee, Chairman Wainwright then adjourned the meeting at 4:39pm.

Respectfully submitted,

Representative William Wainwright
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:

1. Visitor Registration Sheets
2. Amendment on SB 1741 – **ADOPTED**
3. Financial Spreadsheet prepared by Fiscal Research

North Carolina General Assembly

House Committee on Finance

Minutes

~

June 13, 2006 – 4:00 p.m.

The House Committee on Finance met on Tuesday, June 13, 2006 at 4:00 pm in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Gibson, Howard, Luebke, McComas and Wainwright; Vice-Chairs Daughtridge, Hill, Ross, Weiss, and Womble; and Representatives B. Allen, Blackwood, Blust, Bordsen, Capps, Carney, Dockham, England, Faison, Fisher, Folwell, Glazier, Goforth, Hackney, Harrell, Holliman, Insko, Jones, Lewis, McGee, Rayfield, Underhill, and Walend. Also present were Sergeant-at-Arms Mark Cone, Fred Hines, Marvin Lee, Jerald Perry, Frank Prevo, and Dusty Rhodes. Staff persons present included Cindy Avrette, Rodney Bizzell, David Crotts, Brenna Erford, Canaan Huie, Linda Millsaps, and Martha Walston. The Visitor Registration Sheets are attached and incorporated into these minutes as **attachment 1**.

Chairman Wainwright called the meeting to order at 4:13 pm and recognized the four (4) pages present: (1) Brittany Odom of Wake County, sponsored by Speaker Black; (2) Christie Anthony of Wake County, sponsored by Speaker Black; (3) Katie Cunningham of Moore County, sponsored by Speaker Black; and (4) Kemp Holler of Person County, sponsored by Speaker Black.

SB 1741 - MODIFY APPROPRIATIONS ACT OF 2005 was then placed before the members for consideration. Chairman Wainwright then recognized Representatives Luebke and Gibson who sent forth an amendment (see **attachment 2**). Prior to explanation and debate of the amendment, however, Chairman Wainwright announced that the Committee would only be considering the amendment offered by Representatives Luebke and Gibson. He stated that no other portions of the Appropriations bill would be considered by the Committee. He further informed the members that any amendments offered to perfect the amendment presented by Representatives Luebke and Gibson would be required to be revenue neutral.

Chairman Wainwright then recognized Representative Luebke to begin the explanation of the amendment. (Note: Throughout the explanation, Representatives Luebke and Gibson frequently referred to a financial spreadsheet prepared by Linda Millsaps of Fiscal Research – see **attachment 3**). Representative Luebke briefly noted that the bill lowers the sales tax one-quarter of one percent, effective January 1, 2007; lowers the income tax on the highest income earners one-eighth of one percent (from 8.25 % to 8.125 %), effective July 1, 2006; and provides for a small business health insurance tax credit not to exceed $200 per employee annually. Representative Gibson was then recognized to provide further explanation of the amendment. He informed the members that the amendment also extended the tax credit for aviation fuel to continue support for the Motorsports industry, provides for a small Research & Development Tax Deduction, and lifts the refund of sales tax currently provided to non-profits on the purchase of alcohol. He also noted

that the amendment incorporates the provisions of the 2006 Fee Bill (HB 2433), which was approved by the Committee at its earlier meeting at 8:30 a.m. Following this explanation, Representatives Luebke and Gibson then moved for the adoption of their amendment.

Chairman Wainwright then opened the floor to the Committee for debate. Representative Capps was recognized and asked were the early sunset of the sales tax was provided for in the amendment. Representative Luebke responded by stating that the provision was provided for on page 2, line 4 and page 3, line 23. Representative Lewis was recognized next and inquired as to the inability of employers to take a "double benefit" (i.e. both a credit and deduction) on the small business health insurance tax credit, located on page 7, line 11 of the amendment. Canaan Huie of Bill Drafting was recognized to respond and confirmed that Representative Lewis was correct – no double benefit could be taken under the bill. Chairman Wainwright then entertained some other general discussion on the amendment. Following this, Chairman Wainwright then called the motion to adopt the amendment to a vote, and the amendment was unanimously adopted.

Chairman Wainwright then accepted a motion from Representative Goforth that the Committee give SB 1741 a favorable report, as amended, with a recommendation that the bill be re-referred to the Committee on Pensions and Retirement. Seeing no further debate, the motion was called to a vote, and it carried with no known objection.

Having no further business before the Committee, Chairman Wainwright then adjourned the meeting at 4:39pm.

Respectfully submitted,

Representative William Wainwright
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:

1. Visitor Registration Sheets
2. Amendment on SB 1741 – **ADOPTED**
3. Financial Spreadsheet prepared by Fiscal Research

ATTACHMENT 1

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 13, 2006 - 4:00pm

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
DAVID BARNES	Poyner Spruill
John Rook	NCFPC
Stacy Flannery	NCHCFA
Barbara Carlin	ASSOC
Lu-Ann	NC Psychiatric Assoc / Classroom Teachers Assoc
Kevin Leonard	NCSR
Roger Bone	Bone and Assoc.
SUSANNE STREB	NCRA
Kristi Brogan Cowan	Capstrat
Gary Brown	Northampton County
John McG.	GOO OFFICE

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 13, 2006 - 4:00pm

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bill Scoggin	KCCH
Mark Lanier	UNCW
David Owens	IOG, UNC-CH
Kara Millonzi	IOG, UNC-CH
Jann Fitzgerald	NCFPC
Katherine W. Joyce	NCASA
Elizabeth Dalton	NCRMA
Andy Ellen	NCRMA
3pm stegall	U.C.P.S.
Sam Taylor	NCBIO
Evelyn Hawthorne	DTA R

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 13, 2006 - 4:00pm

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Joanne Stevens	NCNA
Mildred Spearman	NCDOC
Casandra White	NCCCPS
Colleen Kocharek	Smith Moore
Mirelle [illegible]	Intern for Rep [illegible]
Steve Wall	DENR
Ed Regan	NCRGEA
[illegible]	[illegible]
Dione Cherry	Institute for Emerging Issues
Lon Turner	DHHS/DPH
Dennis Harrington	DHHS/DPH

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 13, 2006 - 4:00pm

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Deborah Bowe	NCPNA / NCALHD
Elizabeth Self	NC Sierra Club
Heather Randell	NC Sierra Club
Brian Wright	Conservation Council of NC
Erin Kinsey	NCCN
Emily Kinsey	NCCN
[illegible]	RANC
Connie Wilson	SSI
[illegible]	PPHS
Paula A Wolf	PPHS / Central Pardee Pueblo
Chuck Berman	Carolinas GCSA

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 13, 2006 - 4:00pm

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Chris Valaoras	Valaoras Group
[illegible]	NCACT
Wayne Goodwin	DOI

ATTACHMENT 2

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1741

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

S1741-ALYxf-100 [v.2]

Date June 13 ,2006

Comm. Sub. [YES]
Amends Title ~~[NO]~~ YES
Fourth Edition

Representative Luebke + Gibson

moves to amend the bill on page 1, line 3, by rewriting that line to read:
"APPROPRIATIONS ACT OF 2005; TO SET THE PUBLIC UTILITIES REGULATORY FEE AND THE INSURANCE REGULATORY CHARGE; TO AUTHORIZE A PRIVATE WELL-WATER TESTING FEE; TO CLARIFY FEES FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICE FACILITIES; TO MAKE A TECHNICAL CORRECTION TO THE LICENSURE FEE CAP FOR REVIEW OF HEALTH CARE FACILITY CONSTRUCTION PROJECTS; TO REPEAL THE FEE FOR MINE SAFETY EDUCATION/TRAINING PROGRAMS; TO INCREASE THE PUBLIC WATER SYSTEMS ANNUAL OPERATING PERMIT FEES; TO IMPOSE PUBLIC WATER SYSTEM PLAN REVIEW FEES; TO LOWER THE STATE SALES AND USE TAX BY ONE-QUARTER PERCENTAGE POINT EFFECTIVE JANUARY 1, 2007; TO LOWER THE UPPER INCOME TAX RATE BY ONE-EIGHTH PERCENTAGE POINT EFFECTIVE FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY 1, 2007; TO PROVIDE FOR A HEALTH INSURANCE TAX CREDIT CAPPED AT $200 PER ELIGIBLE EMPLOYEE; TO EXPAND THE DEFINITION OF A DEVELOPMENT ZONE TO INCLUDE AN ECONOMIC DEVELOPMENT AND TRAINING DISTRICT; TO EXTEND THE SUNSET ON AVIATION FUEL SOLD TO MOTORSPORTS RACING TEAMS; TO ENHANCE THE TAX BENEFITS RELATING TO ETHYL ALCOHOL AND BIODIESEL; TO PROVIDE FOR A SALES AND USE TAX BENEFIT FOR RESEARCH AND DEVELOPMENT COMPANIES; AND TO ELIMINATE SALES AND USE TAX REFUNDS FOR PURCHASES OF ALCOHOLIC BEVERAGES.";

and on page 107, lines 20-26 by rewriting those lines to read:

"PART XXIV. TAX REDUCTIONS

REDUCE SALES TAX RATE EARLY

SECTION 24.1.(a) Section 34.13(c) of S.L. 2001-424, as amended by Section 38.1 of S.L. 2003-284, Section 9.1 of S.L. 2005-144, and Section 33.1 of S.L. 2005-276, reads as rewritten:

'**SECTION 34.13.(c)** This section becomes effective October 16, 2001, and applies to sales made on or after that date. ~~This section is repealed effective for sales made on or after July 1, 2007.~~ This section does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this section before the effective date of its amendment or repeal; nor does it affect the right to any refund or credit of a tax that accrued under the amended or repealed statute before the effective date of its amendment or repeal.'

SECTION 24.1.(b) G.S. 105-164.4(a), as amended by subsection (a) of this section, reads as rewritten:

'(a) A privilege tax is imposed on a retailer at the following percentage rates of the retailer's net taxable sales or gross receipts, as appropriate. The general rate of tax is four and ~~one-half percent (4 1/2%).~~one-quarter percent (4.25%).

...'

SECTION 24.1.(c) G.S. 105-164.4(a), as amended by subsections (a) and (b) of this section, reads as rewritten:

'(a) A privilege tax is imposed on a retailer at the following percentage rates of the retailer's net taxable sales or gross receipts, as appropriate. The general rate of tax is four ~~and one-quarter percent (4.25%).~~percent (4%).

...'

SECTION 24.1.(d) G.S. 105-164.44F (a) reads as rewritten:

'(a) Amount. – The Secretary must distribute to the cities part of the taxes imposed by G.S. 105-164.4(a)(4c) on telecommunications service. The Secretary must make the distribution within 75 days after the end of each calendar quarter. The amount the Secretary must distribute is ~~eighteen and three one-hundredths percent (18.03%)~~ eighteen and seventy one-hundredths percent (18.70%) of the net proceeds of the taxes collected during the quarter, minus two million six hundred twenty thousand nine

hundred forty-eight dollars ($2,620,948). This deduction is one-fourth of the annual amount by which the distribution to cities of the gross receipts franchise tax on telephone companies, imposed by former G.S. 105-120, was required to be reduced beginning in fiscal year 1995-96 as a result of the "freeze deduction." The Secretary must distribute the specified percentage of the proceeds, less the "freeze deduction" among the cities in accordance with this section.'

SECTION 24.1.(e) G.S. 105-164.44F(a), as amended by subsection (d) of this section, reads as rewritten:

'(a) Amount. – The Secretary must distribute to the cities part of the taxes imposed by G.S. 105-164.4(a)(4c) on telecommunications service. The Secretary must make the distribution within 75 days after the end of each calendar quarter. The amount the Secretary must distribute is ~~eighteen and seventy one-hundredths percent (18.70%)~~nineteen and forty-two one-hundredths percent (19.42%) of the net proceeds of the taxes collected during the quarter, minus two million six hundred twenty thousand nine hundred forty-eight dollars ($2,620,948). This deduction is one-fourth of the annual amount by which the distribution to cities of the gross receipts franchise tax on telephone companies, imposed by former G.S. 105-120, was required to be reduced beginning in fiscal year 1995-96 as a result of the "freeze deduction." The Secretary must distribute the specified percentage of the proceeds, less the "freeze deduction" among the cities in accordance with this section.'

SECTION 24.1.(f) Subsection (b) of this section becomes effective January 1, 2007, and applies to sales made on or after that date. Subsection (d) of this section becomes effective January 1, 2007, and applies to taxes collected on or after that date. Subsection (c) of this section becomes effective July 1, 2007, and applies to sales made on or after that date. Subsection (e) of this section becomes effective July 1, 2007, and applies to taxes collected on or after that date. The remainder of this section is effective when it becomes law.

REDUCE INDIVIDUAL UPPER INCOME TAX RATE EARLY

SECTION 24.2..(a) Section 39.1 of S.L. 2003-284, as amended by Section 36.1(a) of S.L. 2005-276, is repealed.

SECTION 24.2.(b) G.S. 105-134.2(a), as amended by subsection (a) of this section, reads as rewritten:

'(a) A tax is imposed upon the North Carolina taxable income of every individual. The tax shall be levied, collected, and paid annually and shall be computed at the following percentages of the taxpayer's North Carolina taxable income.

(1) For married individuals who file a joint return under G.S. 105-152 and for surviving spouses, as defined in section 2(a) of the Code:

Over	Up To	Rate
0	$21,250	6%
$21,250	$100,000	7%
$100,000	$200,000	7.75%
$200,000	NA	~~8.25%~~8.125%

(2) For heads of households, as defined in section 2(b) of the Code:

Over	Up To	Rate
0	$17,000	6%
$17,000	$80,000	7%
$80,000	$160,000	7.75%
$160,000	NA	~~8.25%~~8.125%

(3) For unmarried individuals other than surviving spouses and heads of households:

Over	Up To	Rate
0	$12,750	6%
$12,750	$60,000	7%
$60,000	$120,000	7.75%
$120,000	NA	~~8.25%~~8.125%

(4) For married individuals who do not file a joint return under G.S. 105-152:

Over	Up To	Rate

0	$10,625	6%
$10,625	$50,000	7%
$50,000	$100,000	7.75%
$100,000	NA	~~8.25%~~8.125%' .

SECTION 24.2.(c) G.S. 105-134.2(a), as amended by subsections (a) and (b) of this section, reads as rewritten:

'(a) A tax is imposed upon the North Carolina taxable income of every individual. The tax shall be levied, collected, and paid annually and shall be computed at the following percentages of the taxpayer's North Carolina taxable income.

(1) For married individuals who file a joint return under G.S. 105-152 and for surviving spouses, as defined in section 2(a) of the Code:

Over	Up To	Rate
0	$21,250	6%
$21,250	$100,000	7%
$100,000	~~$200,000~~NA	7.75%
~~$200,000~~	~~NA~~	~~8.125%~~

(2) For heads of households, as defined in section 2(b) of the Code:

Over	Up To	Rate
0	$17,000	6%
$17,000	$80,000	7%
$80,000	~~$160,000~~NA	7.75%
~~$160,000~~	~~NA~~	~~8.125%~~

(3) For unmarried individuals other than surviving spouses and heads of households:

Over	Up To	Rate
0	$12,750	6%
$12,750	$60,000	7%
$60,000	~~$120,000~~NA	7.75%

~~$120,000~~	~~NA~~	~~8.125%~~

(4) For married individuals who do not file a joint return under G.S. 105-152:

Over	Up To	Rate
0	$10,625	6%
$10,625	$50,000	7%
$50,000	~~$100,000~~NA	7.75%
~~$100,000~~	~~NA~~	~~8.125%~~ .

SECTION 24.2.(d) Subsection (b) of this section is effective for taxable years beginning on or after January 1, 2007. Subsection (c) of this section is effective for taxable years beginning on or after January 1, 2008. The remainder of this section is effective when it becomes law.

SECTION 24.3. Reserved.

SMALL BUSINESS HEALTH INSURANCE TAX CREDIT

SECTION 24.4.(a) Article 3B of Chapter 105 of the General Statutes is amended by adding a new section to read:

'**§ 105-129.16E. Credit for small business employee health benefits.**

(a) Credit. – A small business that provides health benefits for all of its eligible employees during the taxable year is allowed a credit to offset its costs in providing health benefits for its eligible employees. For the purposes of this subsection, a taxpayer provides health benefits if it pays at least fifty percent (50%) of the premiums for health care coverage that equals or exceeds the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee pursuant to G.S. 58-50-125.

The credit is equal to a dollar amount per eligible employee, not to exceed the taxpayer's costs of providing health benefits for its eligible employees during the taxable year. For each eligible employee for whom the taxpayer provides health benefits, the amount is two hundred dollars ($200.00).

(b) Allocation. – If the taxpayer is an individual who is a nonresident or a part-year resident, the taxpayer must reduce the amount of the credit by multiplying it by the fraction calculated under G.S. 105-134.5(b) or (c), as appropriate. If the taxpayer is not an individual and is required to apportion its multistate business income to this State, the taxpayer must reduce the amount of the credit by multiplying it by the apportionment fraction used to apportion its business income to this State.

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

(1) Eligible employee. – Defined in G.S. 58-50-110.

(2) Small business. – A taxpayer that employs no more than 25 eligible employees throughout the taxable year.

(d) No Double Benefit. – A taxpayer may not claim a credit under this section for costs for which it claimed a deduction under the Code. A taxpayer that claims a credit provided under this section must adjust taxable income as provided in G.S. 105-130.5(a)(19) or G.S. 105-134.6(c)(11), as applicable.

(e) Sunset. – This section expires for taxable years beginning on or after January 1, 2010.'

SECTION 24.4.(b) G.S. 105-130.5(a) is amended by adding a new subdivision to read:

'(a) The following additions to federal taxable income shall be made in determining State net income:

...

(19) To the extent not included in federal taxable income, the costs of providing employee health benefits for which the taxpayer claims a credit under G.S. 105-129.16E.'

SECTION 24.4.(c) G.S. 105-134.6(c) is amended by adding a new subdivision to read:

'(c) Additions. – The following additions to taxable income shall be made in calculating North Carolina taxable income, to the extent each item is not included in taxable income:

...

(11) The costs of providing employee health benefits for which the taxpayer claims a credit under G.S. 105-129.16E.'

SECTION 24.4.(d) This section is effective for taxable years beginning on or after January 1, 2007.

EXPAND DEFINITION OF DEVELOPMENT ZONE

SECTION 24.5.(a) G.S. 105-129.3A(a) reads as rewritten:

'(a) Development Zone Defined. – A development zone is an area comprised of either an economic development and training district as defined by G.S. 153A-317.12 or one or more contiguous census tracts, census block groups, or both in the most recent federal decennial census that meets all of the following conditions:

(1) Every census tract and census block group in the zone is located in whole or in part within the primary corporate limits of a city with a population of more than 5,000 according to the most recent annual population estimates certified by the State Budget Officer.

(2) It has a population of 1,000 or more according to the most recent annual population estimates certified by the State Budget Officer.

(3) More than twenty percent (20%) of its population is below the poverty level according to the most recent federal decennial census.

(4) Every census tract and census block group in the zone meets at least one of the following conditions:

a. More than ten percent (10%) of its population is below the poverty level according to the most recent federal decennial census.

b. It is immediately adjacent to another census tract or census block group that is in the same zone and has more than twenty percent (20%) of its population below the poverty level according to the most recent federal decennial census.

(5) None of the census tracts or census block groups in the zone is located in another development zone designated by the Secretary of Commerce.'

SECTION 24.5.(b) This section is effective for taxable years beginning on or after January 1, 2004.

EXTEND SUNSET ON SALES AND USE TAX REFUND FOR AVIATION FUEL FOR MOTORSPORTS RACING TEAMS

SECTION 24.6.(a) G.S. 105-164.14(l) reads as rewritten:

'(l) Aviation Fuel for Motorsports Events. – A motorsports racing team or a motorsports sanctioning body is allowed a refund of the sales and use tax paid by it in this State on aviation fuel that is used to travel to or from a motorsports event in this State, to travel to a motorsports event in another state from a location in this State, or to travel to this State from a motorsports event in another state. For the purposes of this subsection, a "motorsports event" includes a motorsports race, a motorsports sponsor event, and motor sports testing. A request for a refund must be in writing and must include any information and documentation the Secretary requires. A request for a refund is due within six months after the end of the State's fiscal year. Refunds applied for after the due date are barred. This subsection is repealed for purchases made on or after January 1, 2009.'

SECTION 24.6.(b) Section 62 of S.L. 2005-435 reads as rewritten:

'**SECTION 62.** This part becomes effective January 1, 2005, and applies to purchases made on or after that date. ~~This part~~Section 61 is repealed effective for purchases made on or after January 1, 2007. This part does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this part before the effective date of its amendment or repeal; nor does it affect the right to any refund or credit of a tax that accrued under the amended or repealed statute before the effective date of its amendment or repeal.'

SECTION 24.6.(c) This section is effective when it becomes law.

ETHYL ALCOHOL TAX CREDIT AND SALES TAX REFUND

SECTION 24.7.(a) G.S. 105-129.16D is recodified as G.S. 105-129.71.

SECTION 24.7.(b) Chapter 105 of the General Statutes is amended by adding a new Article to read:

'Article 3H.

'Tax Incentives for Renewable Fuel.

'**§ 105-129.70. Definitions.**

The following definitions apply in this Article:

(1) Cost. – In the case of property owned by the taxpayer, cost is determined pursuant to regulations adopted under section 1012 of the Code, subject to the limitation on cost provided in section 179 of the Code. In the case of property the taxpayer leases from another, cost is value as determined pursuant to G.S. 105-130.4(j)(2).

(2) Renewable fuel. – Either of the following:

a. Biodiesel, as defined in G.S. 105-449.60.

b. Ethanol either unmixed or in mixtures with gasoline that are seventy percent (70%) or more ethanol by volume.

'§ 105-129.71. Credit for constructing renewable fuel facilities.

(a) Dispensing Credit. – A taxpayer that constructs and installs and places in service in this State a qualified commercial facility for dispensing renewable fuel is allowed a credit equal to fifteen percent (15%) of the cost to the taxpayer of constructing and installing the part of the dispensing facility, including pumps, storage tanks, and related equipment, that is directly and exclusively used for dispensing or storing renewable fuel. A facility is qualified if the equipment used to store or dispense renewable fuel is labeled for this purpose and clearly identified as associated with renewable fuel.

The entire credit may not be taken for the taxable year in which the facility is placed in service but must be taken in three equal annual installments beginning with the taxable year in which the facility is placed in service. If, in one of the years in which the installment of a credit accrues, the portion of the facility directly and exclusively used for dispensing or storing renewable fuel is disposed of or taken out of service, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under ~~G.S. 105-129.17.~~G.S. 105-129.72.

(b) Twenty-five Percent Production Credit. – A taxpayer that constructs and places in service in this State a commercial facility for processing renewable fuel and that invests at least one hundred fifty million dollars ($150,000,000) in the facility is allowed a credit equal to twenty-five percent (25%) of the cost to the taxpayer of constructing and equipping the facility. The taxpayer must obtain a written determination from the Secretary of Commerce that the taxpayer is expected to invest

within a three-year period at least one hundred fifty million ($150,000,000) in the facility. The entire credit may not be taken for the taxable year in which the facility is placed in service but must be taken in seven equal annual installments beginning with the taxable year in which the facility is placed in service. If, in one of the years in which the installment of a credit accrues, the facility with respect to which the credit was claimed is disposed of or taken out of service, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under ~~G.S. 105-129.17.~~G.S. 105-129.72.

(b1) Thirty-five Percent Production Credit. – A taxpayer that constructs and places in service in this State three or more commercial facilities for processing renewable fuel and that invests a total amount of at least four hundred million dollars ($400,000,000) in the facilities is allowed a credit equal to thirty-five percent (35%) of the cost to the taxpayer of constructing and equipping th e facilities. The taxpayer must obtain a written determination from the Secretary of Commerce that the taxpayer is expected to invest within a five-year period a total amount of at least four hundred million ($400,000,000) in three or more facilities. The credit must be taken in seven equal annual installments beginning with the taxable year in which the first facility is placed in service. If, in one of the years in which the installment of credit accrues, a facility with respect to which the credit was claimed is disposed of or taken out of service, the credit expires and the taxpayer may not take any remaining installment of credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.72.

(c) No Double Credit. – A taxpayer may take the thirty-five percent (35%) credit allowed under this section or the twenty-five percent (25%) credit allowed under this section during a taxable year with respect to a facility, but may not take both credits with respect to the same facility. A taxpayer that claims any other credit allowed under this Chapter with respect to the costs of constructing and installing a facility may not take ~~the~~ a credit allowed in this section with respect to the same costs.

~~(d) Sunset. This section is repealed effective for facilities placed in service on or after January 1, 2008.~~

'**§ 105-129.72. Allocation; cap; carryforward.**

(a) Allocation. – The credit allowed by this Article may be taken against the franchise tax levied under Article 3 of this Chapter and the income taxes levied under Article 4 of this Chapter. When the taxpayer claims an installment of a credit under this Article, the taxpayer must elect the percentage of the installment to be applied against the tax levied under Article 3 of this Chapter with any remaining percentage to be applied against the tax levied under Article 4 of this Chapter. This election is not binding for the year in which it is made or for any carryforwards of that installment. A taxpayer may elect a different allocation for each year in which the taxpayer claims an installment of a credit.

(b) Cap. – The amount of credit claimed in a taxable year under this Article may not exceed the total amount of tax imposed under Articles 3 and 4 of this Chapter combined.

(c) Carryforward. – Any unused portion of a credit allowed under this Article may be carried forward for the next succeeding 25 years. A successor in business may take the credits of a predecessor as if they were carryforwards of a credit allowed to the successor in business.

'§ 105-129.73. Forfeiture.

A taxpayer forfeits the twenty-five percent (25%) production credit under G.S. 105-129.71(b), if the taxpayer fails to meet the level of investment required under that subsection within the required period. A taxpayer that claimed a thirty-five percent (35%) production credit under G.S. 105-129.71(b1) and fails to make the level of investment required under that subsection within the required period, but does make the level of investment required under subsection (b) of that section within the required period with respect to one or more facilities forfeits the amount of credit claimed under G.S.105-129.71(b1) in excess of the amount that would have been allowed under G.S. 105-129.71(b). A taxpayer that claimed a thirty-five percent (35%) production credit un G.S. 105-129.71(b1) and fails to make the level of investment required under that subsection and fails to make the level of investment required under G.S. 105-129.71(b) with respect to any facility forfeits the entire credit. A taxpayer that forfeits a credit under this Article is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30

days after the date the credit is forfeited. A taxpayer that fails to pay the past taxes and interest by the due date is subject to penalties provided in G.S. 105-236.

'**§ 105-129.74. Substantiation.**

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

'**§ 105-129.75. Reports.**

The Department of Revenue must publish by May 1 of each year the following information, itemized by taxpayer, for the 12-month period ending the preceding December 31:

(1) The number of taxpayers that took the credits allowed in this Article.

(2) The cost of renewable fuel facilities with respect to which credits were taken.

(3) The total cost to the General Fund of the credits taken.

'**§ 105-129.76. Sunset.**

This article is repealed effective for facilities placed in service on or after January 1, 2011.'

'SECTION 24.7.(c) G.S. 105-164.14(j)(3) reads as rewritten:

(j) Certain Industrial Facilities. – The owner of an eligible facility is allowed an annual refund of sales and use taxes as provided in this subsection.

...

(3) Industries. – This subsection applies to the following industries:

...

h. Nonpotable ethyl alcohol manufacturing.

...'

SECTION 24.7.(d) Subsections (a) and (b) of this section are effective for taxable years beginning on or after January 1, 2006. Subsection (c) of this section becomes effective January 1, 2006, and applies to purchases made on or after that date. The remainder of this section is effective when it becomes law.

TAX CREDIT FOR BIODIESEL PROVIDERS

SECTION 24.8.(a) Part 4 of Article 36C of Chapter 105 of the General Statutes is amended by adding a new section to read:

'**§ 105-449.103. Credit for biodiesel providers.**

(a) Credit. – A biodiesel provider or refiner who imports or produces biodiesel is allowed a credit against the tax imposed by this Article on that portion of the biodiesel that is derived in whole from agricultural products or animal fats or wastes from these products or fats. The credit is equal to the amount of taxes paid under this Article on the applicable portion. In order to be eligible for the credit allowed by this section, the taxpayer shall be licensed as required by G.S. 105-446.65 and shall file a return reporting fuel movement information as required by G.S. 105-449.96.

(b) Transfer from General Fund. – The Secretary shall withhold from the net collections under Article 5 of this Chapter on a monthly basis an amount equal to the total amount of credits claimed under this section. The Secretary shall allocate the funds withheld under this subsection in the same manner as under G.S. 105-449.125.

(c) Sunset. – The section is repealed January 1, 2011.'

SECTION 2. This section becomes effective January 1, 2008.

SALES AND USE TAX RATE REDUCTION ON RESEARCH AND DEVELOPMENT EQUIPMENT

SECTION 24.9.(a) G.S. 105-187.51B reads as rewritten:

'**§ 105-187.51B. Tax imposed on ~~recycling equipment.~~ certain recyclers and research and development companies.**

(a) Tax. – A privilege tax is imposed on ~~a~~ the following:

(1) A major recycling facility that purchases any of the following tangible personal property for use in connection with the facility:

~~(1)~~a. Cranes, structural steel crane support systems, and foundations related to the cranes and support systems.

~~(2)~~ b. Port and dock facilities.

~~(3)~~ c. Rail equipment.

~~(4)~~ d. Material handling equipment.

(2) An eligible research and development company that purchases equipment or an attachment or repair part for equipment that meets all of the following requirements:
a. Is capitalized by the company for tax purposes under the Code.
b. Is used by the company in the research and development of tangible personal property.
c. Would be considered mill machinery under G.S. 105-187.51 if it were purchased by a manufacturing industry or plant and used in the research and development of tangible personal property manufactured by the industry or plant.

(b) Rate. – The tax is one percent (1%) of the sales price of the equipment or other tangible personal property. The maximum tax is eighty dollars ($80.00) per article.'

SECTION 24.9.(b) G.S 105-187.50 reads as rewritten:

'§ 105-187.50. Definitions.

The definitions in G.S 105-164.3 apply in this Article. In addition, the following definitions apply in this Article:

(1) NAICS. – Defined in G.S. 105-129.2.
(2) Eligible research and development company. – A company that performs research and development and is in one of the following NAICS industry classifications:
a. Internet service providers, Web search portals, and data processing subsector 518 as defined by NAICS.
b. Software publishers industry group 5112 as defined by NAICS.
c. Computer systems design and related services industry group 5415 as defined by NAICS.
d. Research and development in the physical, engineering, and life sciences industry 54171 as defined by NAICS.'

SECTION 24.8.(c) This section becomes effective January 1, 2007, and applies to purchases made on or after that date.

PART XXIV-A. SALES TAX CHANGE

NO SALES TAX REFUND FOR ALCOHOL PURCHASES

SECTION 24A.1.(a) G.S. 105-164.14 is amended by adding a new subsection to read:

'(d1) Alcoholic Beverages. – The refunds authorized by this section do not apply to purchases of alcoholic beverages, as defined in G.S. 18B-101.'

SECTION 24A.1.(b) This section becomes effective July 1, 2006, and applies to purchases made on or after that date.

PART XXV. RESERVED.

PART XXVI. SET REGULATORY FEES

SET UTILITIES REGULATORY FEE

SECTION 26.1.(a) The percentage rate to be used in calculating the public utility fee under G.S. 62-302(b)(2) is twelve-hundredths of one percent (0.12%) for each public utility's North Carolina jurisdictional revenues earned during each quarter that begins on or after July 1, 2006.

SECTION 26.1.(b). The electric membership corporation regulatory fee imposed under G.S. 62-302(b1) for the 2006-2007 fiscal year is two hundred thousand dollars ($200,000).

SET INSURANCE REGULATORY FEE

SECTION 26.2. The percentage rate to be used in calculating the insurance regulatory charge under G.S. 58-6-25 is five and one-half percent (5.5%) for the 2006 calendar year.

PART XXVII. RESERVED

PART XXVII-A. HEALTH AND HUMAN SERVICES FEES

PRIVATE WELL-WATER TESTING FEE

SECTION 27A.1.(a) G.S. 130A-5 is amended by adding the following new subdivision to read:

'**§ 130A-5. Duties of the Secretary.**

The Secretary shall have the authority:

...

(16) To charge a fee of up to fifty-five dollars ($55.00) for analyzing private well-water samples sent to the State Laboratory of Public Health by local health departments. The fee shall be imposed only for analyzing samples from newly constructed wells. The fee shall be computed annually by the Director of the State Laboratory of Public Health by analyzing the previous year's testing at the State Laboratory of Public Health, and applying the amount of the total cost of the private well-water testing, minus State appropriations that support this effort. The fee includes the charge for the private well-water panel test kit.'

SECTION 27A.1.(b) The Department of Health and Human Services, Division of Public Health, shall use funds available for the 2006-2007 fiscal year to pay for positions for the private well water safety program authorized in the Current Operations and Capital Improvements Appropriations Act of 2006. Funds realized from fees collected during the 2006-2007 fiscal year shall be used to replace available funds authorized under this subsection and allocated for positions authorized for the private well water safety program for the 2006-2007 fiscal year.

SECTION 27A.1.(c) This section becomes effective July 1, 2006.

CLARIFICATION OF FEES FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICE FACILITIES

SECTION 27A.2.(a) G.S. 122C-23(h) reads as rewritten:

'(h) The Department shall charge facilities licensed under this Chapter ~~that have licensed beds~~ a nonrefundable annual base license fee plus a nonrefundable annual per-bed fee as follows:

Type of Facility	Number of Beds	Base Fee	Per-Bed Fee
Facilities (non ICF/MR):	0 beds	$175.00	$0
~~Facilities (non-ICF/MR):~~			
	~~6 of fewer~~		
	1 to 6 beds	$250.00	$0

	More than 6 beds	$350.00	$12.50
ICF/MR Only:	~~6 or fewer~~		
	1 to 6 beds	$650.00	$0
	More than 6 beds	$650.00	$12.50'

SECTION 27A.2.(b) This section becomes effective July 1, 2006.

TECHNICAL CORRECTION TO LICENSURE FEE LIMITS

SECTION 27A.3.(a) G.S. 131E-267 reads as rewritten:

'**§ 131E-267. Fees for departmental review of health care facility construction projects.**

The Department of Health and Human Services shall charge a fee for the review of each health care facility construction project to ensure that project plans and construction are in compliance with State law. The fee shall be charged on a one-time, per-project basis, as follows, and shall not exceed ~~twelve thousand five hundred dollars ($12,500)~~twenty-five thousand dollars ($25,000) for any single project:

Institutional Project	**Project Fee**
Hospitals	$ 300.00 plus $0.20/square foot of project space
Nursing Homes	$ 250.00 plus $0.16/square foot of project space
Ambulatory Surgical Facility	$ 200.00 plus $0.16/square foot of project space
Psychiatric Hospital	$ 200.00 plus $0.16/square foot of project space
Adult Care Home	
7 or more beds	$ 175.00 plus $0.10/square foot of project space

Residential Project	**Project Fee**
Family Care Homes	$ 175.00 flat fee
ICF/MR Group Homes	$ 275.00 flat fee
Group Homes: 1-3 beds	$ 100.00 flat fee
Group Homes: 4-6 beds	$ 175.00 flat fee
Group Homes: 7-9 beds	$ 225.00 flat fee
Other residential:	
More than 9 beds	$ 225.00 plus $0.075/square foot of project space.'

SECTION 27A.3.(b) This section becomes effective July 1, 2006.

PART XXVII-B. NATURAL AND ECONOMIC RESOURCES FEES

REPEAL FEE FOR MINE SAFETY EDUCATION/TRAINING PROGRAMS

SECTION 27B.1.(a) G.S. 74-24.16(d) is repealed.

SECTION 27B.1.(b) This section becomes effective July 1, 2006.

INCREASE CERTAIN PUBLIC WATER SYSTEMS ANNUAL OPERATING PERMIT FEES/IMPOSE FEES FOR REVIEW OF ENGINEERING PLANS AND SPECIFICATIONS FOR THE CONSTRUCTION OR ALTERATION OF PUBLIC WATER SYSTEMS

SECTION 27B.2.(a) G.S. 130A-328 reads as rewritten:

'**§ 130A-328. ~~Community~~ Public water system operating permit and permit fee.**

(a) No person shall operate a community or non transient non-community water system who has not been issued an operating permit by the Department. A community or non transient non-community water system operating permit shall be valid from January 1 through December 31 of each year unless suspended or revoked by the Department for cause. The Commission shall adopt rules concerning permit issuance and renewal and permit suspension and revocation. The annual fees in subsection (b) shall be prorated on a monthly basis for permits obtained after January 1 of each year.

(b) The following fees are imposed for the issuance or renewal of a permit to operate a community or non transient non-community water system; the fees are based on the number of persons served by the system:

~~Number of Persons Served~~	Fee
~~100 or fewer~~	~~$150~~
~~More than 100 but no more than 500~~	~~$175~~
~~More than 500 but no more than 3300~~	~~$300~~
~~More than 3300 but no more than 5000~~	~~$450~~
~~More than 5000 but no more than 10,000~~	~~$550~~
~~More than 10,000 but no more than 50,000~~	~~$650~~
~~More than 50,000~~	~~$850~~
Non Community Water Systems:	

Base Fee:	
Non transient non-community	$150
Community Water Systems:	
Number of Persons Served	
50 or fewer	$255
More than 50 but no more than 100	$270
More than 100 but no more than 200	$330
More than 200 but no more than 300	$350
More than 300 but no more than 400	$385
More than 400 but no more than 500	$420
More than 500 but no more than 750	$780
More than 750 but no more than 1000	$810
More than 1000 but no more than 2000	$840
More than 2000 but no more than 3000	$870
More than 3000 but no more than 4000	$1350
More than 4000 but no more than 5000	$1460
More than 5000 but no more than 7500	$1925
More than 7500 but no more than 10,000	$2065
More than 10,000 but no more than 25,000	$2600
More than 25,000 but no more than 50,000	$2925
More than 50,000 but no more than 75,000	$4250
More than 75,000 but no more than 100,000	$4675
More than 100,000 but no more than 250,000	$5100
More than 250,000 but no more than 500,000	$5525
More than 500,000	$5950

(c) The following fees are imposed for the review of plans, specifications, and other information submitted to the Department for approval of construction or alteration of a public water system. The fees are based on the type of constructions or alteration proposed:

Distribution system:	Fee
Construction of water lines, less than 5000 linear feet	$150
Construction of water lines, 5000 linear feet or more	$200

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1741

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

S1741-ALYxf-100 [v.2]

Other construction or alteration to a distribution system	$75
Ground water system:	
Construction of a new ground water system or adding a new well	$200
Alteration to an existing ground water system	$100
Surface Water system:	
Construction of a new surface water treatment facility	$250
Alteration to an existing surface water treatment facility	$150
Water System Management Plan review	$75
Miscellaneous changes or maintenance not covered above	$50

(d) The Department may charge an administrative fee of up to one hundred fifty dollars ($150.00) for failure to pay the permit fee by January 31 of each year.

(e) All fees collected under this section shall be applied to the costs of administering and enforcing this Article.'

SECTION 27B.2.(b) The Department of Environment and Natural Resources may create a schedule for phasing in the new fees added to G.S. 130A-328, as amended by subsection (a) of this section, over multiple operating permit cycles.

SECTION 27B.2.(c) This section becomes effective January 1, 2007."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1741

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

S1741-ALDf-31 [v.1]

Date _____,2006

Comm. Sub. [YES]
Amends Title [NO]
PCS20533-LR-52

Representative Harrison

Moves to amend the House Appropriations Committee Budget Report on page H-8, between Items 28 and 29, by adding the following to read:

"**(2.0) Land Resources**

28A Fund Sedimentation Positions

Establish seven (7.0) receipt supported positions to provide improved monitoring of land disturbing activities, to increase technical assistance, and to encourage development of improved methods of sediment control.

Environmental Specialist III	7.0	$466,336

Salaries and Benefits	$357,591
Supplies	$11,900
Property & Equipment	$33,670
Purchased Services	$49,175
Transfer to Reg. Office	$14,000"; and

to amend the bill on page 1, lines , by adding after "TO IMPOSE PUBLIC WATER SYSTEM PLAN REVIEW FEES;" the following to read:"TO INCREASE FEES FOR REVIEW AND APPROVAL OF EROSION AND SEDIMENTATION CONTROL PLANS;"; and

to amend the bill on page , line , by adding the following language:

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☒ House Committee Substitute for

SB 1741 A BILL TO BE ENTITLED AN ACT TO MODIFY THE CURRENT OPERATIONS AND CAPITAL APPROPRIATIONS ACT OF 2005.

☒ With a favorable report as amended, which changes the title, and recommendation that the bill be re-referred to the Committee on Pensions and Retirement.

(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 _____.

House Finance Amendment to SB 1741	06-07	07-08
Utility Regulatory Fee (set annually)	n/a	n/a
Insurance Regulatory Fee (set annually)	n/a	n/a
Well Testing Fee	915,530	1,121,285
Mental Health Fees	225,050	225,050
Licensure Fee Limit Correction	n/a	n/a
Repeal Mine Fee*		
Public Water Permit Fees	1,250,726	1,250,726
Cut State sales tax rate 1/4 cent, effective January 1, 2007	(118,000,000)	(14,000,000)
Extend Aviation Fuel Credit Sunset 2 Years (Motorsports)	(90,000)	(160,000)
Tax Incentive for Ethyl Alcohol and Biodisel Production	(50,000)	(13,700,000)
R&D sales tax Reduction	(4,100,000)	(7,900,000)
No Sales Tax Refund for Alcohol Sales	Negligible	Negligible
Reduce upper income tax bracket to 8.125%, eff. Jan. 1, 2007	($14,300,000)	($17,500,000)
Small Business Health Insurance Tax Credit ($200)	($10,800,000)	($24,300,000)
Bill Lee Adjustments	($800,000)	($400,000)
TOTAL	**($145,748,694)**	**($75,362,939)**

* This fee did not generated the expected or needed amount of funding, and has been replaced with a General Fund appropriation.

ATTACHMENT 3

North Carolina General Assembly

House Committee on Finance

Minutes

~

June 20, 2006

The House Committee on Finance met on Tuesday, June 20, 2006 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Gibson, Howard, Luebke, and McComas; Vice-Chairs Daughtridge, Hill, Ross, Weiss, and Womble; and Representatives B. Allen, Blackwood, Blust, Bordsen, Capps, Dockham, England, Faison, Folwell, Glazier, Goforth, Hackney, Harrell, Holliman, Jones, Lewis, Lucas, McGee, Rayfield, Underhill, Vinson, Walend, and Wiley. Also present were Sergeant-at-Arms Nell Casper, Fred Hines, Marvin Lee, and Dusty Rhodes. Staff persons present included Cindy Avrette, Rodney Bizzell, David Crotts, Brenna Erford, Dan Ettefagh, Canaan Huie, Linda Millsaps, and Martha Walston. The Agenda and Visitor Registration Sheets are attached and incorporated into these minutes as **attachments 1 and 2**.

Chairman McComas called the meeting to order at 8:32 am and recognized the ten (10) pages present: (1) Alyssa Jaklitsch of Mecklenburg County, sponsored by Speaker Black; (2) Jessie Oldham of Wake County, sponsored by Representative Owens; (3) Laura Creath of Cumberland County, sponsored by Representative Glazier; (4) April Hodges of Carteret County, sponsored by Representative Preston; (5) Lindsay Luckadoo of Rutherford County, sponsored by Representative England; (6) Eryn Ruppe of Rutherford County, sponsored by Representative England; (7) Anna Carr Ivey of New Hanover County, sponsored by Representative McComas; (8) Lauren Khater of Wake County, sponsored by Speaker Black; (9) Lorna Knick of Wake County, sponsored by Representative Capps; and (10) Molly Herlong of Mecklenburg County, sponsored by Speaker Black.

Chairman McComas then referred **SB 1804 - TRYON/BOILING SPRINGS OCCUPANCY TAX** to the House Finance Subcommittee on Occupancy Tax.

The first bill considered by the Committee was **HB 2658 – OAK ISLAND SEWER TREATMENT FEE** (see **attachment 3**). Chairman McComas then recognized Representative Hill who moved for the adoption of the proposed committee substitute (PCS) for consideration by the Committee. The motion carried. Representative Hill then explained that the PCS would allow the Town of Oak Island to impose a sewer treatment fee. He also stated that similar legislation was enacted for the Town of Holden Beach in 2004. Representative Womble was then recognized and moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. Seeing no further discussion, Chairman McComas called the motion to a vote and the motion carried by consent.

The next bill considered by the Committee was **HB 2725 – CHAPEL HILL ANNEXATION** (see **attachment 4**). Chairman McComas recognized Representative Hackney who explained that the bill annexes a small piece of land that was left out of a previous annexation. The bill would allow the City of Chapel Hill to place a sidewalk on the edge of the annexed property. Following the explanation, Representative Holliman was recognized and moved that House Bill 2725 be given a favorable report by the Committee. As there was no further debate, Chairman McComas called the motion to a vote and the motion carried without objection.

Chairman McComas then recognized Representative Daughtry to explain **HB 2126 – CLAYTON SATELLITE ANNEXATIONS** (see **attachment 5**). Representative Daughtry explained that this bill removes the 10% cap on satellite annexations for the Town of Clayton. He also stated that this bill had received no opposition. Representative Folwell was then recognized and moved that House Bill 2126 be given a favorable report by the Committee. Seeing no further discussion, Chairman McComas called the motion to a vote and the motion carried by consent.

The following bill taken under consideration by the Committee was **HB 2604 – CLAYTON ANNEXATION** (see **attachment 6**). Representative Daughtry was again recognized and explained that this bill annexes two specified tracts of land into the Town of Clayton. Following the explanation, Representative Folwell was recognized and moved that House Bill 2604 be given a favorable report by the Committee. Representative Blackwood was then recognized and asked if the annexation provided by this bill was voluntary. Representative Daughtry responded saying that the bill was requested by the affected parties. As there was no further debate, Chairman McComas called the motion to a vote and the motion carried without objection.

Without objection, the proposed committee substitute for **SB 1734 – HARRISBURG DEANNEXATION** (see **attachment 7**) was then placed before the Committee for consideration. Senator Hartsell then explained that the proposed committee substitute de-annexes 9.5 acres from the town of Harrisburg. Following the explanation, Representative Womble was then recognized and inquired about the difference between the original bill and the PCS. In response, Senator Hartsell explained that the effective date was changed in the PCS and this change was non-controversial. Representative Womble was again recognized and moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. Seeing no further discussion, Chairman McComas called the motion to a vote and it carried by consent.

Chairman McComas then recognized Representative Daughtridge to explain **HB 2656 – DORTCHES/MORGANTON DEANNEXATION** (see **attachment 8**) Representative Daughtridge stated that this bill de-annexes property from the Town of Dortches and the City of Morganton. He explained that both proposals for de-annexation were supported by the affected parties. Representative Holliman was then recognized and moved that House Bill 2656 be given a favorable report by the Committee. As there was no further debate, Chairman McComas called the motion to a vote and it carried without objection.

The next bill considered by the Committee was **HB 2491 – CANDOR ANNEXATION** (see **attachment 9**). Chairman McComas recognized Representative Goodwin who explained that this bill for annexation to the Town of Candor was requested by the affected property owners because of a need for municipal water and sewer services. Following the explanation, Representative Underhill was recognized and moved that House Bill 2491 be given a favorable report. As there was no further debate, Chairman McComas called the motion to a vote and the motion carried by consent.

HB 2549 – LANDIS ANNEXATION/PLANNING (see **attachment 10**) was the next bill considered by the Committee. Chairman McComas then recognized Representative Steen who explained that the bill annexes nine different tracts of land and authorizes the Town to begin exercising its planning and zoning powers before the effective date of the annexation on September 30, 2007. He also said that no controversy had arisen in respect to the bill. Representative Womble was then recognized and moved that House Bill 2549 be given a favorable report by the Committee. Seeing no further discussion, Chairman McComas called the motion to a vote and the motion carried without objection.

The final bill under the Committee's consideration was **HB 2170 – BILL LEE CHANGES** (see **attachment 11**). Chairman McComas first recognized Representative Daughtridge who moved for the adoption of the proposed committee substitute (PCS) for the Committee's consideration. The motion carried. Representative Harrell was then recognized and briefly explained how the modifications to the Bill Lee Act as provided in the PCS will allow the economic plan to be a more effective tool for economic development in North Carolina. Canaan Huie of Bill Drafting was then recognized by Chairman McComas and began a detailed PowerPoint presentation (see **attachment 12**) outlining the proposed changes to the Bill Lee Act. Mr. Huie reported that the most significant structural change to the tax credit change would be a move from a 5-tier to a 3-tier structure. Factors determining initial rank for counties and placement within the 3-tier structure would be changed to include unemployment rate, median household income, population growth, and assessed property value per capita in each county. Another change to the Bill Lee Act would be to prohibit prisoners from being included in the ranking determination. Mr. Huie also alluded to a handout (see **attachment 13**) showing a list of the rankings by county under the current Bill Lee Act and under the PCS for HB 2170.

Secretary Fain of the Department of Commerce was recognized following the presentation, and stated that the modifications provided by the PCS to the Bill Lee Act reflect the changing nature of North Carolina's economy. He continued saying that the Bill Lee Act was initially designed primarily for manufacturing jobs and that this bill would target more toward research and development companies, as well as, technologically-oriented businesses. Secretary Fain also stated that the Bill Lee Act has been a valuable tool for new and existing businesses and the changes provided in the PCS will allow the economic development plan to become more effective. Mayor Allen Joines from Winston-Salem was also recognized and spoke about the great amount of work that had been spent on forming the PCS and urged the Committee to support the bill.

Representative Luebke was then recognized and stated how this bill is a great improvement over the existing Bill Lee Act because the original Act gave credits to companies for investments they would have made with or without the additional benefits provided to them by the Act. He then asked staff to give an overview of the fiscal impact of the bill. Chairman McComas then recognized David Crotts of Fiscal Research who explained that this bill would cost $90 million over the next year but a slight revenue gain could be expected in the long-run to the general fund.

Representative Womble was then recognized and asked staff if inner-cities were included in the development zones. In response, Canaan Huie of Bill Drafting was recognized and said that the PCS should help to more narrowly focus the incentives on the inner-city areas. Representative Womble was then recognized and urged the Committee to support the bill. He then moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill, with a recommendation that the proposed committee substitute be re-referred to the House Standing Committee on Appropriations.

Representative Holliman was then recognized and asked why the assessed property value per capita was included as a factor in determining county ranking. Secretary Fain responded by reporting that this factor would help to give a better determination of the total asset levels of each county. Chairman McComas then recognized Representative Blackwood who asked if manufactured housing was dropped from the list of eligible industries. David Crotts was recognized and stated that the manufactured housing industry would retain eligibility under the PCS. Representative Underhill then asked how the assessed property value factor affects the distribution of tax credits. David Crotts of Fiscal Research then stated that the additional factor should help to give the tier-structure greater stability over time. Seeing no further questions, Chairman McComas then called the motion previously made by Representative Womble to a vote and it carried by consent.

Having no further business before the Committee, Chairman McComas then adjourned the meeting at 9:55 am.

Respectfully submitted,

Representative Danny McComas
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:

1. Agenda
2. Visitor Registration Sheets
3. House Bill 2658 (and related materials)
4. House Bill 2725 (and related materials)
5. House Bill 2126 (and related materials)
6. House Bill 2604 (and related materials)
7. Senate Bill 1734 (and related materials)
8. House Bill 2656 (and related materials)
9. House Bill 2491 (and related materials)
10. House Bill 2549 (and related materials)
11. House Bill 2170 (and related materials)
12. PowerPoint presentation on House Bill 2170
13. Handout – Spreadsheet on 2006 Tier Level by County

North Carolina General Assembly

House Committee on Finance

Minutes

~

June 20, 2006

The House Committee on Finance met on Tuesday, June 20, 2006 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Gibson, Howard, Luebke, and McComas; Vice-Chairs Daughtridge, Hill, Ross, Weiss, and Womble; and Representatives B. Allen, Blackwood, Blust, Bordsen, Capps, Dockham, England, Faison, Folwell, Glazier, Goforth, Hackney, Harrell, Holliman, Jones, Lewis, Lucas, McGee, Rayfield, Underhill, Vinson, Walend, and Wiley. Also present were Sergeant-at-Arms Nell Casper, Fred Hines, Marvin Lee, and Dusty Rhodes. Staff persons present included Cindy Avrette, Rodney Bizzell, David Crotts, Brenna Erford, Dan Ettefagh, Canaan Huie, Linda Millsaps, and Martha Walston. The Agenda and Visitor Registration Sheets are attached and incorporated into these minutes as **attachments 1 and 2.**

Chairman McComas called the meeting to order at 8:32 am and recognized the ten (10) pages present: (1) Alyssa Jaklitsch of Mecklenburg County, sponsored by Speaker Black; (2) Jessie Oldham of Wake County, sponsored by Representative Owens; (3) Laura Creath of Cumberland County, sponsored by Representative Glazier; (4) April Hodges of Carteret County, sponsored by Representative Preston; (5) Lindsay Luckadoo of Rutherford County, sponsored by Representative England; (6) Eryn Ruppe of Rutherford County, sponsored by Representative England; (7) Anna Carr Ivey of New Hanover County, sponsored by Representative McComas; (8) Lauren Khater of Wake County, sponsored by Speaker Black; (9) Lorna Knick of Wake County, sponsored by Representative Capps; and (10) Molly Herlong of Mecklenburg County, sponsored by Speaker Black.

Chairman McComas then referred **SB 1804 - TRYON/BOILING SPRINGS OCCUPANCY TAX** to the House Finance Subcommittee on Occupancy Tax.

The first bill considered by the Committee was **HB 2658 – OAK ISLAND SEWER TREATMENT FEE** (see **attachment 3**). Chairman McComas then recognized Representative Hill who moved for the adoption of the proposed committee substitute (PCS) for consideration by the Committee. The motion carried. Representative Hill then explained that the PCS would allow the Town of Oak Island to impose a sewer treatment fee. He also stated that similar legislation was enacted for the Town of Holden Beach in 2004. Representative Womble was then recognized and moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. Seeing no further discussion, Chairman McComas called the motion to a vote and the motion carried by consent.

The next bill considered by the Committee was **HB 2725 – CHAPEL HILL ANNEXATION** (see **attachment 4**). Chairman McComas recognized Representative Hackney who explained that the bill annexes a small piece of land that was left out of a previous annexation. The bill would allow the City of Chapel Hill to place a sidewalk on the edge of the annexed property. Following the explanation, Representative Holliman was recognized and moved that House Bill 2725 be given a favorable report by the Committee. As there was no further debate, Chairman McComas called the motion to a vote and the motion carried without objection.

Chairman McComas then recognized Representative Daughtry to explain **HB 2126 – CLAYTON SATELLITE ANNEXATIONS** (see **attachment 5**). Representative Daughtry explained that this bill removes the 10% cap on satellite annexations for the Town of Clayton. He also stated that this bill had received no opposition. Representative Folwell was then recognized and moved that House Bill 2126 be given a favorable report by the Committee. Seeing no further discussion, Chairman McComas called the motion to a vote and the motion carried by consent.

The following bill taken under consideration by the Committee was **HB 2604 – CLAYTON ANNEXATION** (see **attachment 6**). Representative Daughtry was again recognized and explained that this bill annexes two specified tracts of land into the Town of Clayton. Following the explanation, Representative Folwell was recognized and moved that House Bill 2604 be given a favorable report by the Committee. Representative Blackwood was then recognized and asked if the annexation provided by this bill was voluntary. Representative Daughtry responded saying that the bill was requested by the affected parties. As there was no further debate, Chairman McComas called the motion to a vote and the motion carried without objection.

Without objection, the proposed committee substitute for **SB 1734 – HARRISBURG DEANNEXATION** (see **attachment 7**) was then placed before the Committee for consideration. Senator Hartsell then explained that the proposed committee substitute de-annexes 9.5 acres from the town of Harrisburg. Following the explanation, Representative Womble was then recognized and inquired about the difference between the original bill and the PCS. In response, Senator Hartsell explained that the effective date was changed in the PCS and this change was non-controversial. Representative Womble was again recognized and moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. Seeing no further discussion, Chairman McComas called the motion to a vote and it carried by consent.

Chairman McComas then recognized Representative Daughtridge to explain **HB 2656 – DORTCHES/MORGANTON DEANNEXATION** (see **attachment 8**)
Representative Daughtridge stated that this bill de-annexes property from the Town of Dortches and the City of Morganton. He explained that both proposals for de-annexation were supported by the affected parties. Representative Holliman was then recognized and moved that House Bill 2656 be given a favorable report by the Committee. As there was no further debate, Chairman McComas called the motion to a vote and it carried without objection.

The next bill considered by the Committee was **HB 2491 – CANDOR ANNEXATION** (see **attachment 9**). Chairman McComas recognized Representative Goodwin who explained that this bill for annexation to the Town of Candor was requested by the affected property owners because of a need for municipal water and sewer services. Following the explanation, Representative Underhill was recognized and moved that House Bill 2491 be given a favorable report. As there was no further debate, Chairman McComas called the motion to a vote and the motion carried by consent.

HB 2549 – LANDIS ANNEXATION/PLANNING (see **attachment 10**) was the next bill considered by the Committee. Chairman McComas then recognized Representative Steen who explained that the bill annexes nine different tracts of land and authorizes the Town to begin exercising its planning and zoning powers before the effective date of the annexation on September 30, 2007. He also said that no controversy had arisen in respect to the bill. Representative Womble was then recognized and moved that House Bill 2549 be given a favorable report by the Committee. Seeing no further discussion, Chairman McComas called the motion to a vote and the motion carried without objection.

The final bill under the Committee's consideration was **HB 2170 – BILL LEE CHANGES** (see **attachment 11**). Chairman McComas first recognized Representative Daughtridge who moved for the adoption of the proposed committee substitute (PCS) for the Committee's consideration. The motion carried. Representative Harrell was then recognized and briefly explained how the modifications to the Bill Lee Act as provided in the PCS will allow the economic plan to be a more effective tool for economic development in North Carolina. Canaan Huie of Bill Drafting was then recognized by Chairman McComas and began a detailed PowerPoint presentation (see **attachment 12**) outlining the proposed changes to the Bill Lee Act. Mr. Huie reported that the most significant structural change to the tax credit change would be a move from a 5-tier to a 3-tier structure. Factors determining initial rank for counties and placement within the 3-tier structure would be changed to include unemployment rate, median household income, population growth, and assessed property value per capita in each county. Another change to the Bill Lee Act would be to prohibit prisoners from being included in the ranking determination. Mr. Huie also alluded to a handout (see **attachment 13**) showing a list of the rankings by county under the current Bill Lee Act and under the PCS for HB 2170.

Secretary Fain of the Department of Commerce was recognized following the presentation, and stated that the modifications provided by the PCS to the Bill Lee Act reflect the changing nature of North Carolina's economy. He continued saying that the Bill Lee Act was initially designed primarily for manufacturing jobs and that this bill would target more toward research and development companies, as well as, technologically-oriented businesses. Secretary Fain also stated that the Bill Lee Act has been a valuable tool for new and existing businesses and the changes provided in the PCS will allow the economic development plan to become more effective. Mayor Allen Joines from Winston-Salem was also recognized and spoke about the great amount of work that had been spent on forming the PCS and urged the Committee to support the bill.

Representative Luebke was then recognized and stated how this bill is a great improvement over the existing Bill Lee Act because the original Act gave credits to companies for investments they would have made with or without the additional benefits provided to them by the Act. He then asked staff to give an overview of the fiscal impact of the bill. Chairman McComas then recognized David Crotts of Fiscal Research who explained that this bill would cost $90 million over the next year but a slight revenue gain could be expected in the long-run to the general fund.

Representative Womble was then recognized and asked staff if inner-cities were included in the development zones. In response, Canaan Huie of Bill Drafting was recognized and said that the PCS should help to more narrowly focus the incentives on the inner-city areas. Representative Womble was then recognized and urged the Committee to support the bill. He then moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill, with a recommendation that the proposed committee substitute be re-referred to the House Standing Committee on Appropriations.

Representative Holliman was then recognized and asked why the assessed property value per capita was included as a factor in determining county ranking. Secretary Fain responded by reporting that this factor would help to give a better determination of the total asset levels of each county. Chairman McComas then recognized Representative Blackwood who asked if manufactured housing was dropped from the list of eligible industries. David Crotts was recognized and stated that the manufactured housing industry would retain eligibility under the PCS. Representative Underhill then asked how the assessed property value factor affects the distribution of tax credits. David Crotts of Fiscal Research then stated that the additional factor should help to give the tier-structure greater stability over time. Seeing no further questions, Chairman McComas then called the motion previously made by Representative Womble to a vote and it carried by consent.

Having no further business before the Committee, Chairman McComas then adjourned the meeting at 9:55 am.

Respectfully submitted,

Representative Danny McComas
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:

1. Agenda
2. Visitor Registration Sheets
3. House Bill 2658 (and related materials)
4. House Bill 2725 (and related materials)
5. House Bill 2126 (and related materials)
6. House Bill 2604 (and related materials)
7. Senate Bill 1734 (and related materials)
8. House Bill 2656 (and related materials)
9. House Bill 2491 (and related materials)
10. House Bill 2549 (and related materials)
11. House Bill 2170 (and related materials)
12. PowerPoint presentation on House Bill 2170
13. Handout – Spreadsheet on 2006 Tier Level by County

AGENDA

ATTACHMENT 1

House Finance Committee

Tuesday, June 20, 2006
8:30 a.m.
Room 544 LOB
Chaired by: Rep. McComas

Co-Chairs

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

Call to Order

Introduction of Pages

Bills:

HB 2126	**CLAYTON SATELLITE ANNEXATIONS**	*Rep. Daughtry*
HB 2170	**BILL LEE CHANGES**	*Reps. Harrell, Daughtridge, Gibson, & Owens*
HB 2491	**CANDOR ANNEXATION**	*Rep. Goodwin*
HB 2549	**LANDIS ANNEXATION/PLANNING**	*Reps. Steen & Coates*
HB 2604	**CLAYTON ANNEXATION**	*Rep. Daughtry*
HB 2656	**DORTCHES/MORGANTON DEANNEXATION**	*Rep. Daughtridge*
HB 2658	**OAK ISLAND SEWER TREATMENT FEE**	*Rep. Stiller*
HB 2725	**CHAPEL HILL ANNEXATION**	*Reps. Insko & Hackney*
SB 1734	**HARRISBURG DEANNEXATION**	*Sen. Hartsell*

Adjournment

CORRECTED NOTICE:
SB 1734 – ADDED

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

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

DAY & DATE: **Tuesday, June 20, 2006**

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

LOCATION: **Room 544, LOB**

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

HB 2126 – CLAYTON SATELLITE ANNEXATIONS – Rep. Daughtry

HB 2170 – BILL LEE CHANGES – Reps. Harrell, Daughtridge, Gibson, & Owens

HB 2491 – CANDOR ANNEXATION – Rep. Goodwin

HB 2549 – LANDIS ANNEXATION/PLANNING – Reps. Steen & Coates

HB 2604 – CLAYTON ANNEXATION – Rep. Daughtry

HB 2656 – DORTCHES/MORGANTON DEANNEXATION – Rep. Daughtridge

HB 2658 – OAK ISLAND SEWER TREATMENT FEE – Rep. Stiller

HB 2725 – CHAPEL HILL ANNEXATION – Reps. Insko & Hackney

SB 1734 – HARRISBURG DEANNEXATION – Sen. Hartsell

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

I hereby certify this notice was filed by the committee clerk at the following offices at **3:05 p.m.** on **June 19, 2006**:

X Principal Clerk
X Reading Clerk - House Chamber

Jason A. Cannon (Committee Clerk)

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

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

DAY & DATE: **Tuesday, June 20, 2006**

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

LOCATION: **Room 544, LOB**

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

HB 2126 – CLAYTON SATELLITE ANNEXATIONS – Rep. Daughtry

HB 2170 – BILL LEE CHANGES – Reps. Harrell, Daughtridge, Gibson, & Owens

HB 2491 – CANDOR ANNEXATION – Rep. Goodwin

HB 2549 – LANDIS ANNEXATION/PLANNING – Reps. Steen & Coates

HB 2604 – CLAYTON ANNEXATION – Rep. Daughtry

HB 2656 – DORTCHES/MORGANTON DEANNEXATION – Rep. Daughtridge

HB 2658 – OAK ISLAND SEWER TREATMENT FEE – Rep. Stiller

HB 2725 – CHAPEL HILL ANNEXATION – Reps. Insko & Hackney

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

I hereby certify this notice was filed by the committee clerk at the following offices at **10:45 a.m.** on **June 15, 2006**:

X Principal Clerk
X Reading Clerk - House Chamber

Jason A. Cannon (Committee Clerk)

ATTACHMENT 2

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 20, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
DAVID BARNES	Payne + Sprull
Stephanie Dorko	Charlotte Chamber
Boyd Cauble	City of Charlotte
Barry Eveland	NCCBI
JOHN GOODMAN	NCCBI
Scott Bowers	[illegible]
Danielle Bell	Payne & Sprull
GENE AINSWORTH	AINSWORTH LLC.
Lisa Martin	NC Home Builders Assoc.
BILL SCOGGIN	KCCH
SUSANNE STREB	NCRA
Alan Mendelson	Payne + Sprull
Rogers Baer	Baer + Assoc

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 20, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jim Blackburn	Association of County Commissioners
Anthony Allen	"
Ken McKay	D.O.R.
Lesley Cates	Speaker's Office

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 20, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jim Dohrn	
Shannon Miller	CUCA
Karl Knapp	DOR
Anna Mitchell	NCDOR
Guy Ralph	NC DOR
Jonathan TART	NCDOR
[illegible] Judge	[illegible]
Gloria Faircloth	NC Dept Commerce
Rodney Swink	Commerce
Bill McNeal	NC Rural Center
Allen Jones	City of W.S. / N.C. Mun Coalit

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 20, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jim Fain	DOC
Rep Pasley	Rep. Hagan
Anita McNeil	DENR
Veronica Cunnington	Rep. Wainwright Intern
Kelly Calabria	Capstrat
Michelle Goryn	Institute for Emerging Issues
David Beck	NC DOR
Pam Myers	NCACC
John McKay	Gov Office
Paige Ottley	Gov Office
CLEVELAND SIMPSON	NCDEP OF COMMERCE

VISITOR REGISTRATION SHEET

Name of Committee _____ Date _____

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Cam Crow	BPMHL
Jim Rapp	NCTA
Jeff Mixon	Civil
Dan Holman	CWMTF
Erica Ricde	CWMTF
Doug Byrd	Commerce
Robin Smith	DENR
DUN HUBART	NCDOC
Sandy Sims	WCSR
Dean Plunkett	NCBWWA
Rob Schofield	NCNP

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H **D**

HOUSE BILL 2658
PROPOSED COMMITTEE SUBSTITUTE H2658-PCS10626-RE-3

Short Title: Oak Island Sewer Treatment Fee. (Local)

Sponsors:

Referred to:

May 25, 2006

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE TOWN OF OAK ISLAND TO IMPOSE A SEWER TREATMENT FEE.

The General Assembly of North Carolina enacts:

SECTION 1. Section 8 of S.L. 2004-96 reads as rewritten:

"**SECTION 8.** This act applies only within the ~~Town of Holden Beach~~ Towns of Holden Beach and Oak Island."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 2658

Short Title:	Oak Island Sewer Treatment Fee.	(Local)
Sponsors:	Representative Stiller.	
Referred to:	Local Government I, if favorable, Finance.	

May 25, 2006

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE TOWN OF HOLDEN BEACH TO IMPOSE A SEWER TREATMENT FEE.

The General Assembly of North Carolina enacts:

SECTION 1. Section 8 of S.L. 2004-96 reads as rewritten:

"**SECTION 8.** This act applies only within the ~~Town of Holden Beach~~ Town of Holden Beach and Oak Island."

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

HOUSE BILL 2658:
Oak Island Sewer Treatment Fee

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 20, 2006
Introduced by:	Rep. Stiller	**Summary by:**	Judy Collier
Version:	PCS to First Edition H2658-PCS10626		Research Assistant

SUMMARY: House Bill 2658 is a local bill that authorizes the Town of Oak Island to create a fee-supported sewer treatment district. The bill received a favorable report from House Local Government I Committee on June 7, 2006.

The PCS to the First Edition of the bill corrects an error in the long title of the bill.

CURRENT LAW: G.S. 160A-312 authorizes cities to acquire, construct, establish, enlarge, improve, maintain, own, operate, and contract for the operation of a public enterprise, which includes wastewater collection, treatment, and disposal systems of all types. Cities are also authorized to establish a schedule of rates and fees for the use of the services furnished by any public enterprise. Under this authority, only actual users of the particular service may be charged fees for its use. Alternatively, a city may require payment of a periodic availability charge. Under either option, the fees must reflect the cost of the service and could not include capital costs.

BILL ANALYSIS: House Bill 2658 authorizes the Town of Oak Island to create a fee-supported sewer treatment district. The Town would be authorized to impose annual fees for the availability of sewer service within the district. The fees may not exceed the cost of providing the sewer collection facility and the cost of the contract with a county to provide it with the facilities to transport, treat, and dispose of the waste. The fees would be imposed on owners of each dwelling unit or parcel of property that could or does benefit from the availability of sewage treatment. The fees would be collected in the same manner as *ad valorem* taxes. The revenues from the fees would be used only to pay the debt service for the sewer system.

This method of financing would enable the Town to impose the fees on owners of vacant lots, which arguably it could not do under provisions of current law, as well as enable the Town to use the fees for the capital costs associated with constructing the sewer system.

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

BACKGROUND: Similar legislation was enacted for the Town of Holden Beach in 2004.

H2658e1-SMRE-CSRE

Erika Churchill, Committee Counsel to House Local Government I Committee substantially contributed to this summary.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☐ Committee Substitute for

HB 2658 A BILL TO BE ENTITLED AN ACT TO ALLOW THE TOWN OF HOLDEN BEACH TO IMPOSE A SEWER TREATMENT FEE.

☒ With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

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

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 2725

Committee Substitute Favorable 6/7/06

Short Title: Chapel Hill Annexation. (Local)

Sponsors:

Referred to:

May 25, 2006

A BILL TO BE ENTITLED

AN ACT TO ANNEX CERTAIN DESCRIBED TERRITORY TO THE CORPORATE LIMITS OF THE TOWN OF CHAPEL HILL.

The General Assembly of North Carolina enacts:

SECTION 1. The corporate limits of the Town of Chapel Hill are extended to include the following described territory:

In Durham County, beginning at a point on the southern right-of-way of I-40, said point also being the southeastern most corner of Tract C (See PB 142, Pg. 188 Durham County, PIN# 0709-01-19-1301); thence from said point and in a southwesterly direction to the northeastern most corner of the Tract: Durham County Pin # 0709-01-18-1906, said point also being on the western right-of-way of Pope Road; thence in a westerly direction and along with Tract #0709-01-18-1906 and the southern right-of-way of Old Chapel Hill-Durham Road; to a point, said point being the northwestern most corner of aforementioned Tract #0709-01-18-1906, thence crossing Old Chapel Hill-Durham Road in a northwesterly direction to a point on the northern right-of-way, said point also being the southwestern most corner of the aforementioned Tract C (#0709-01-19-1301); thence with the northern right-of-way of the Old Chapel Hill-Durham Road in an easterly direction to the place and point of beginning.

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

HOUSE BILL 2725:
Chapel Hill Annexation

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 20, 2006
Introduced by:	Reps. Insko, Hackney	**Summary by:**	Judy Collier
Version:	Second Edition		Research Assistant

SUMMARY: House Bill 2725 is a local bill that would annex certain described territory to the corporate limits of the Town of Chapel Hill. The 1st Edition PCS of the bill received a favorable report from House Local Government I Committee on June 7, 2006.

CURRENT LAW: North Carolina law sets forth four (4) basic ways in which a town or city may annex an area.

1. **Voluntary Annexation**. The owners of all real property in the area desiring to be annexed sign a petition requesting annexation. Part 1 of Article 4 of Chapter 160A.
2. **Legislative Act**. The General Assembly has the authority to extend the boundaries of any town or city. This method is most helpful to a town or city trying to annex an area that they could not otherwise.
3. **Satellite Annexation**. This method allows a town or city to annex certain non-contiguous areas meeting the statutory standards into the town or city limits. Part 4 of Article 4 of Chapter 160A.
4. **Non-voluntary Annexation**. The town or city brings into the corporate limits an area that has not voluntarily agreed to be annexed. Parts 2 and 3 of Article 4 of Chapter 160A.

BILL ANALYSIS:

House Bill 2725 would annex specifically described territory into the existing corporate limits of the Town of Chapel Hill.

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

BACKGROUND: On May 8, 2006, the Council of the Town of Chapel Hill adopted a Resolution establishing the Town's legislative program that included a request for introduction of a local bill to annex a small portion of right of way along the Durham-Chapel Hill annexation boundary. This parcel is situated within a larger parcel that is already within the Chapel Hill corporate limits and was overlooked during an annexation in 2000. The parcel needs to be within the corporate limits of the Town of Chapel Hill to be eligible for use of local Capital Improvement Plan monies for a future sidewalk.

H2725e2-SMRE

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☒Committee Substitute for

HB 2725 A BILL TO BE ENTITLED AN ACT TO ANNEX CERTAIN DESCRIBED TERRITORY TO THE CORPORATE LIMITS OF THE TOWN OF CHAPEL HILL.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

HOUSE BILL 2126

Short Title:	Clayton Satellite Annexations.	(Local)
Sponsors:	Representatives Daughtry; and Langdon.	
Referred to:	Local Government II.	

May 18, 2006

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

...

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

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

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

HOUSE BILL 2126:
Clayton Satellite Annexations

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 20, 2006
Introduced by:	Rep. Daughtry	**Summary by:**	Judy Collier
Version:	First Edition		Research Assistant

SUMMARY: House Bill 2126 is a local bill that would exempt the Town of Clayton from the requirement for satellite annexation that the area to be annexed, when added to the area within all other satellite corporate limits, may not exceed 10% of the area within the primary corporate limits of the annexing city. The bill received a favorable report from House Local Government II Committee on June 7, 2006.

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

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

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

BILL ANALYSIS: House Bill 2126 would permanently exempt the Town of Clayton from the 5th requirement, which requires that the proposed area for satellite annexation, when added to the area within all other satellite corporate limits, not exceed 10% of the area within the primary corporate limits of the annexing city.

The purpose of the 5th requirement is designed to further the legislative goal of not allowing annexations to undermine the notion of a city as a single, contiguous, and compact entity. In practice, however, the standard has proved to be a problem for many smaller cities, because one large development by itself may easily exceed the 10% limit. Because of this, the General Assembly has exempted a significant number of cities and towns (at least 63) from this 10% rule by local act.

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

H2126e1-SMRE (Trina Griffin, counsel to Senate Finance Committee, substantially contributed to this summary.)

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

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☐ Committee Substitute for

HB 2126 A BILL TO BE ENTITLED AN ACT TO REMOVE THE CAP ON SATELLITE ANNEXATIONS FOR THE TOWN OF CLAYTON.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 2604*

Short Title:	Clayton Annexation.	(Local)
Sponsors:	Representative Daughtry.	
Referred to:	Local Government I, if favorable, Finance.	

May 25, 2006

A BILL TO BE ENTITLED

AN ACT TO ANNEX CERTAIN DESCRIBED PROPERTY IN JOHNSTON COUNTY TO THE CORPORATE LIMITS OF THE TOWN OF CLAYTON.

The General Assembly of North Carolina enacts:

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

All of Tract One, containing 457.815 acres, as shown on a map entitled "Map for Jack E. Norwood and wife, Gloria A. Norwood, and N.C.S.U. Foundation, Inc. and Marty Flynn" dated April 14, 2005, and recorded on four sheets in Plat Book 66 at Page 209-212 Johnston County Registry, reference to which is hereby made for metes and bounds directions and distances, the Southwest boundary being the Neuse River, the Southeast boundary being along the meanders of Mark Creek, the Northeast boundary being the center line of Pritchard Road (S.R.#1714) and the Northwest boundary being a new line shown on Sheets One, Three, and Four.

AND

That certain tract or parcel of land in Wilders Township, Johnston County, North Carolina, more particularly described as follows:

BEGINNING at an iron stake in the Smithfield Road in Dewey's line or at Dewey's corner, and running thence along said road S 31 degrees 30' E 574.9 feet, S 27 degrees 30' E 109.6 feet, S 13 degrees 45' E 96.4 feet, S 5 degrees 15' W 134.4 feet, and S 6 degrees 30' W 554.4 feet to an iron pipe, newly established corner between R. L. Whitfield and wife and Jesse W. Cole and A. L. Crumpacker, thence N 86 degrees W 254 feet to an iron pin; thence S 61 degrees 45' W 2720 feet to an iron pipe; thence S 82 degrees 30' W 444 feet to a stake; thence S 78 W 376 feet to a stake; thence S 36 degrees 15' W 100 feet to a stake: thence S 4 degrees 45' W 242 feet to an iron stake; thence S 44 degrees W 379 feet to an iron stake; thence S 37 W 925 feet to an iron stake; thence S 65 W 125 feet to a pine and iron stake: thence N 68 W 1420 feet to an iron pipe; thence S 75 degrees 45' W 3030 feet to a white oak on the bank of Neuse River; thence N 6 degrees 15' E 1611 feet to a stake, Williamson's line; thence with

Williamson's line S 87 degrees 30 minutes E 2845 feet to a stake: thence continuing with Williamson's line N 4 E 289.7 feet to a stake; thence continuing with Williamson's line S 86 degrees 30' E 1353 feet to a stake; thence continuing with Williamson's line N 4 degrees 45' E 2695 feet to an iron stake, Dewey's line; thence with said Dewey's line N 75 degrees 30' E 1744 feet to an iron stake; thence continuing with Dewey's line S 00 degrees 50' W 396 feet to an iron stake; thence continuing with Dewey's line S 89 degrees 10' E 2100 feet to the BEGINNING, containing 354 acres, more or less, according to plat and survey of C. B. Fulghum, C.E., made in July, 1945, of record in Plat Book 4, page 185 in the office of the Register of Deeds of Johnston County, and being the same tract or parcel of land conveyed to R. L. Whitfield and wife by C. A. Pope and wife, and conveyed to J. M. Gregory and W. D. Parker by R. L. Whitfield and wife, Sudie P. Whitfield by deed dated June 16, 1947, and recorded in Book 470, page 217, Johnston County Registry, subject to the establishment of a dividing line between the lands of the said R. L. Whitfield and wife and Jesse W. Cole and A. L. Crumpacker by a written instrument dated October 9, 1945, and recorded in Book 443, page 290, Johnston County Registry.

This tract is known as Grantor's W. D. Parker Tract 8686.

Excluding from the descriptions above is any property not located in Johnston County.

SECTION 2. This act becomes effective June 30, 2006.

HOUSE BILL 2604:
Clayton Annexation

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 20, 2006
Introduced by:	Rep. Daughtry	**Summary by:**	Judy Collier
Version:	First Edition		Research Assistant

SUMMARY: House Bill 2604 is a local bill that would annex certain described property in Johnston County to the corporate limits of the Town of Clayton. The bill received a favorable report from House Local Government I Committee on June 7, 2006.

CURRENT LAW: North Carolina law sets forth four (4) basic ways in which a town or city may annex an area.

1. **Voluntary Annexation**. The owners of all real property in the area desiring to be annexed sign a petition requesting annexation. Part 1 of Article 4 of Chapter 160A.
2. **Legislative Act**. The General Assembly has the authority to extend the boundaries of any town or city. This method is most helpful to a town or city trying to annex an area that they could not otherwise.
3. **Satellite Annexation**. This method allows a town or city to annex certain non-contiguous areas meeting the statutory standards into the town or city limits. Part 4 of Article 4 of Chapter 160A.
4. **Non-voluntary Annexation**. The town or city brings into the corporate limits an area that has not voluntarily agreed to be annexed. Parts 2 and 3 of Article 4 of Chapter 160A.

BILL ANALYSIS:

House Bill 2604 would annex two (2) specifically described tracts of land into the existing corporate limits of the Town of Clayton:

- All of Tract One, as shown on a map entitled "Map for Jack E. Norwood and wife, Gloria A. Norwood, and N.C.S.U Foundation, Inc. and Marty Flynn," dated April 14, 2005, and recorded in Plat Book 66, Pages 209-212, Johnston County Registry, containing 457.815 acres.
- Tract or parcel of land in Wilders Township according to plat and survey by C. B. Fulghum, C.E., made in July, 1945, as recorded in Plat Book 4, Page 185, Johnston County Registry, containing 354 acres, more or less.

EFFECTIVE DATE: This act would become effective June 30, 2006.

H2604e1-SMRE

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☐ Committee Substitute for

HB 2604 A BILL TO BE ENTITLED AN ACT TO ANNEX CERTAIN DESCRIBED PROPERTY IN JOHNSTON COUNTY TO THE CORPORATE LIMITS OF THE TOWN OF CLAYTON.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S D

SENATE BILL 1734*
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1734-CSLA-41 [v.1]

6/16/2006 3:51:03 PM

Short Title: Harrisburg Deannexation. (Local)

Sponsors:

Referred to:

May 23, 2006

A BILL TO BE ENTITLED

AN ACT TO DEANNEX CERTAIN DESCRIBED PROPERTY FROM THE CORPORATE LIMITS OF THE TOWN OF HARRISBURG.

The General Assembly of North Carolina enacts:

SECTION 1. The corporate limits of the Town of Harrisburg are reduced by excluding the following described property:

"Lying and being in No. 1 Township, Cabarrus County, North Carolina on the southeast side of Tom Query road and adjoining the lands of E. Kenneth Morris, Jeffery A. Marlow, Jerome F. Capel, and Leslie H. Pistone, and being more particularly described as follows:

'Beginning at a point of orientation being the intersection of Buckingham Place and Tom Query Road thence in a southwesterly direction for approximately 505' to the point of beginning being the corner of E. Kenneth Morris property (DB.548 Page 364) and on the existing right-of-way of Tom Query Road. Thence along the line of E. Kenneth Morris S 44-34-13 E 852.37' to a corner in the rear line of Jeffery A. Marlow (DB. 1274 Page 246 Lot 51 Huntwick Sect. III Mb. 20 Pg. 43). Thence along the rear lines of Jeffery A. Marlow, Jerome F. Capel (DB.#1427 Pg. 237 Lot 52 Huntwick Sect. III Mb. 20 Pg.#43) S 44-35-42 W 484.24' to a corner in the rear line of David S. Zicherman and the rear corner of Leslie H. Pistone (DB.554 Pg.#021) thence along the line of Leslie H. Pistone N 44-34-13 W 859.27' to a corner of Leslie H. Pistone and the right-of-way of Tom Query Road. Thence along the right-of-way of Tom Query Road N 45-24-41 E 484.19' to the point of Beginning. Containing 9.513 acres.'"

SECTION 2. This act is effective from and after July 13, 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 1734*

Short Title:	Harrisburg Deannexation.	(Local)
Sponsors:	Senator Hartsell.	
Referred to:	Finance.	

May 23, 2006

A BILL TO BE ENTITLED

AN ACT TO DEANNEX CERTAIN DESCRIBED PROPERTY FROM THE CORPORATE LIMITS OF THE TOWN OF HARRISBURG.

The General Assembly of North Carolina enacts:

SECTION 1. The corporate limits of the Town of Harrisburg are reduced by excluding the following described property:

"Lying and being in No. 1 Township, Cabarrus County, North Carolina on the southeast side of Tom Query road and adjoining the lands of E. Kenneth Morris, Jeffery A. Marlow, Jerome F. Capel, and Leslie H. Pistone, and being more particularly described as follows:

'Beginning at a point of orientation being the intersection of Buckingham Place and Tom Query Road thence in a southwesterly direction for approximately 505' to the point of beginning being the corner of E. Kenneth Morris property (DB.548 Page 364) and on the existing right-of-way of Tom Query Road. Thence along the line of E. Kenneth Morris S 44-34-13 E 852.37' to a corner in the rear line of Jeffery A. Marlow (DB. 1274 Page 246 Lot 51 Huntwick Sect. III Mb. 20 Pg. 43). Thence along the rear lines of Jeffery A. Marlow, Jerome F. Capel (DB.#1427 Pg. 237 Lot 52 Huntwick Sect. III Mb. 20 Pg.#43) S 44-35-42 W 484.24' to a corner in the rear line of David S. Zicherman and the rear corner of Leslie H. Pistone (DB.554 Pg.#021) thence along the line of Leslie H. Pistone N 44-34-13 W 859.27' to a corner of Leslie H. Pistone and the right-of-way of Tom Query Road. Thence along the right-of-way of Tom Query Road N 45-24-41 E 484.19' to the point of Beginning. Containing 9.513 acres.'"

SECTION 2. This act becomes effective June 30, 2006.

SENATE BILL 1734:
Harrisburg Deannexation

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 20, 2006
Introduced by:	Sen. Hartsell	**Summary by:**	Martha Walston
Version:	Proposed Committee Substitute		Committee Counsel*

SUMMARY: Senate Bill 1734 de-annexes approximately 9½ acres of property from the corporate limits of Harrisburg. The bill received a favorable report from Senate Finance Committee on June 8, 2006.

The proposed committee substitute makes the de-annexation retroactive to July 13, 1998, the date the property was annexed. The town attorney for Harrisburg has requested that the effective date be retroactive.

CURRENT LAW: While a city or town has statutory authority to annex property, either voluntarily or involuntarily, depending upon certain circumstances, there is no statutory authority to de-annex property. Deannexation requires an act of the General Assembly.

BILL ANALYSIS: Senate Bill de-annexes a 91/2-acre parcel of property from the corporate limits of Harrisburg.

BACKGROUND: Effective July 13, 1998, the Town of Harrisburg annexed a 9.513 acre parcel of land on the southeast side of Tom Query Road owned by Big Pasture, Inc. pursuant to a voluntary annexation petition submitted under signature of John R. Whitley, Whitley & Co., as owner of the property, when the company did not actually own the property but was under contract to purchase the property. The property was unoccupied at the time of annexation. After the annexation, Whitley & Co. did not purchase the property and the closing never took place.

The current owner does not want to be in the town and has requested that the property be de-annexed from the corporate limits of Harrisburg. The Town is amenable to de-annexing the property and has requested that the effective date be retroactive to the date of annexation.

EFFECTIVE DATE: This act is effective from and after July 13, 1998.

**Judy Collier, research assistant, contributed substantially to this summary.*

S1734e1-SMRE

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☐ Committee Substitute for

SB 1734 A BILL TO BE ENTITLED AN ACT TO DEANNEX CERTAIN DESCRIBED PROPERTY FROM THE CORPORATE LIMITS OF THE TOWN OF HARRISBURG.

☒ With a favorable report as to the House committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

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

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 2656*

Committee Substitute Favorable 6/7/06

Short Title: Dortches/Morganton Deannexation. (Local)

Sponsors:

Referred to:

May 25, 2006

A BILL TO BE ENTITLED

AN ACT TO REMOVE CERTAIN DESCRIBED PROPERTY FROM THE CORPORATE LIMITS OF THE TOWN OF DORTCHES AND OTHER DESCRIBED PROPERTY FROM THE CORPORATE LIMITS OF THE CITY OF MORGANTON.

The General Assembly of North Carolina enacts:

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

Commencing at a magnetic nail located at the intersection of the centerlines of Benvenue Road (NC 43) and South Browntown Road (SR 1527); thence S 52°41'51"E 517.69 feet to an existing iron axle on the northern right-of-way of Benvenue Road, the southwest corner of Falls Road Baptist Church property, Tract A, Map Book 16 Page 391; thence along the common line between Falls Road Baptist Church and James E. Wells, Deed Book 1857 Page 805, N 04°41'26"E 172.85 feet to an iron pipe; thence along the common line between Falls Road Baptist Church and Janet D. Beabout, Deed Book 1674 Page 245, N 04°53'16"E 205.66 feet to an angle iron found; thence along the common line between Falls Road Baptist Church and property now or formerly owned by Sally L. Stancil, et al, N 05°00'54"E 466.60 feet to an iron pipe set, the POINT OF BEGINNING; thence continuing along the same line N 05°00'54"E 506.25 feet to an existing iron axle found, the northwest corner of Tract A, Map Book 16 Page 391; thence along the common line between the church and James R. Byrd and Cheryl D. Byrd, tenants in common, recorded in Deed Book 1900 Page 392, S 85°16'40"E 268.71 feet to an iron pipe set; thence along the existing jurisdictional boundary between the City of Rocky Mount and the town of Dortches a curve being concave to the right and having a radius of 7,900 feet and a chord bearing and distance of S 32°54'31"W 574.36 feet to the point of beginning and containing 1.61 acres and being a portion of Tract A, Map Book 16 Page 391, Stony Creek Township, Nash County Registry, as shown on map by Mack Gay Associates, P.A. November 7, 2005, Project Number P050335.

SECTION 2. Section 1 of this act shall have no effect upon the validity of any liens of the Town of Dortches for ad valorem taxes or special assessments outstanding before the effective date of this act. Such liens may be collected or foreclosed upon after the effective date of this act as though the property was still within the corporate limits of the Town of Dortches.

SECTION 3. The following described property is removed from the corporate limits of the City of Morganton:

BEGINNING on a stake in the Morganton Dyeing and Finishing Corp. line, said point being North 88° West 110 feet from the northeast corner of said tract of land described in Book 142, Page 168, of the Burke County Registry; and runs thence North 88° West 165 feet to a stake in Morganton Dyeing & Finishing Corp. line; thence South 0° 30' East 476 feet to a stake alongside margin of Rural Paved Road #1949; thence with margin of said road North 87° 30' East 200 feet to a stake along margin of said road; thence a new line North 4° 15' West 462 feet to the BEGINNING corner in the Morganton Dyeing & Finishing Corp. line.

And being a tract of land located approximately 1.4 miles from the primary corporate limits of the City of Morganton and further described in the Warranty Deed recorded in Book 943, at Page 733 of the Burke County Registry and no other tract whatsoever.

SECTION 4. Section 3 of this act shall have no effect upon the validity of any liens of the City of Morganton for ad valorem taxes or special assessments outstanding before the effective date of this act. Such liens may be collected or foreclosed upon after the effective date of this act as though the property was still within the corporate limits of the City of Morganton.

SECTION 5. The property described in Section 3 of this act shall revert to the Residential Transition zoning classification under the zoning ordinances of the City of Morganton until such time as the city reclassifies the property to another classification under the procedures required by such zoning ordinances.

SECTION 6. This act becomes effective June 30, 2006.

HOUSE BILL 2656:
Dortches/Morganton Deannexation

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 20 2006
Introduced by:	Rep. Daughtridge	**Summary by:**	Judy Collier
Version:	Second Edition		Research Assistant

SUMMARY: House Bill 2656 is a local bill that would remove certain described property from the corporate limits of the Town of Dortches and the City of Morganton. The 1st Edition PCS received a favorable report from House Local Government I Committee on June 7, 2006.

CURRENT LAW: While a city or town has statutory authority to annex property, either voluntarily or involuntarily depending upon certain circumstances, there is no statutory authority to de-annex property. Deannexation requires an act of the General Assembly.

BILL ANALYSIS: House Bill 2656 would remove certain described property from the corporate limits of the Town of Dortches and the City of Morganton. The de-annexation would have no effect for either municipality on the validity of any outstanding liens for ad valorem taxes or special assessments prior to the effective date of the act.

The bill stipulates that pending reclassification by the City of Morganton under its zoning ordinances, the de-annexed Morganton property shall revert to the Residential Transition zoning classification.

EFFECTIVE DATE: The act becomes effective June 30, 2006.

DORTCHES BACKGROUND: The Falls Road Baptist church owns a tract of land containing approximately 53 acres on Highway 43 (Benvenue Road) near Dortches. All, except 1.61 acres, is outside the corporate limits of Dortches. The Church petitioned the Town Board to remove the 1.61 acre parcel from the corporate limits. On January 17, 2006, the Town Board acted favorably on the petition by adopting a resolution requesting legislation to remove the described property from the corporate limits of the Town of Dortches, believing it to be in the best interest of the Town and the owners of the Property.

MORGANTON BACKGROUND: This issue stems from a satellite annexation in the 1990's of a Morganton Dyeing and Finishing Corporation plant, including a house that was located on the plant property. Later, when the company's assets were liquidated in bankruptcy, the house was sold and is now individually owned. It is situated approximately 1.4 miles from the primary corporate limits of the City of Morganton. The current owners, who are paying city taxes without city services, petitioned the City Council to remove their property from the corporate limits. The City is in agreement with the property owners and wants to clear the matter up. The City Council took action on June 5, 2006, voting to request legislation to remove the described property from the corporate limits of the City of Morganton, believing it to be in the best interest of the City and the owners of the Property.

H2656e2-SMRE

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☒Committee Substitute for

HB 2656 A BILL TO BE ENTITLED AN ACT TO REMOVE CERTAIN DESCRIBED PROPERTY FROM THE CORPORATE LIMITS OF THE TOWN OF DORTCHES AND OTHER DESCRIBED PROPERTY FROM THE CORPORATE LIMITS OF THE CITY OF MORGANTON.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H **1**

HOUSE BILL 2491

Short Title:	Candor Annexation.	(Local)
Sponsors:	Representative Goodwin.	
Referred to:	Local Government I, if favorable, Finance.	

May 24, 2006

A BILL TO BE ENTITLED

AN ACT TO ANNEX CERTAIN DESCRIBED TERRITORY TO THE TOWN OF CANDOR.

The General Assembly of North Carolina enacts:

SECTION 1. The corporate limits of the Town of Candor are extended by adding the following described territory:

TRACT 1 (Hicks Property, Deed Book 280, Page 411, Montgomery County Registry)

Beginning at spike in the centerline of SR 1573, being the northwest corner of Roman Catholic Church property as recorded in Deed Book 368, Page 232 in the Montgomery County Registry, thence South 20 degrees 0 minutes East along the western line of said Roman Catholic Church property, also being the existing corporate limit line for the town of Candor, for a distance of 822.5 feet to spike in the centerline of SR 1573, thence North 85 degrees 42 minutes West for a distance of 325.6 feet to a stake in the eastern right of way of US 220 bypass, thence North 0 degrees 14 minutes East along said right of way for a distance of 752.8 feet to a stake in said right of way, thence South 83 degrees 50 minutes East of a distance of 40.5 feet to the point of beginning. Containing 3.14 acres, more or less.

TRACT 2 (CP&L Property, Deed Book 229, Page 478, Montgomery County Registry)

(Hicks Property, Deed Book 280, Page 407, Montgomery County Registry) Beginning at a concrete monument at the northeast corner of Roman Catholic Church property, as recorded in Deed Book 368, Page 232 in the Montgomery County Registry, thence South 87 degrees 57 minutes 8 seconds East along SR 1508 for a distance of 539.93 feet to a concrete monument, thence South 84 degrees 11 minutes East along SR 1508 for a distance of 732.7 feet to a concrete monument, thence South 4 degrees 18 minutes West for a distance of 687.8 feet to a concrete monument on the existing corporate limit line for the town of Candor, also being the northeast corner of the David and Frieda Bruton property as recorded in Deed Book 338, Page 157 in the Montgomery County Registry,

thence North 85 degrees 42 minutes West along said corporate limit line and northern line of said Bruton property for a distance of 732.5 feet to a concrete monument, thence North 89 degrees 26 minutes 15 seconds West along said corporate limit line and northern line of said Bruton property for a distance of 539.78 feet to a concrete monument, being the southeast corner of said Roman Catholic Church property, thence North 0 degrees 35 minutes 14 seconds East along said corporate limit line and eastern line of said Roman Catholic Church property for a distance of 720.72 feet to the point of beginning. Containing 20.6 acres, more or less.

TRACT 3 (Maximum Property, Deed Book 517, Page 418, Montgomery County Registry)

Beginning at an existing iron rod at the intersection of the northern right of way of NC 211 and the existing corporate limit line of the town of Candor, being the southeast corner of the Montgomery County Water System tank property as recorded in Deed Book 224, Page 433 in the Montgomery County Registry, thence North 4 degrees 10 minutes 58 seconds East along eastern line of said Water System property, the western right of way of SR 1508 and said corporate limit line for a distance of 1215.23 feet to an existing iron pipe, the following four calls are along the property either now or formerly owned by Katherine McAuley Kalish as recorded in Deed Book 90, Page 338: (1) North 72 degrees 30 minutes 7 seconds East for a distance of 935.07 feet to an existing iron pipe, (2) South 7 degrees 30 minutes 9 seconds West for a distance of 209.07 feet to an existing iron pipe, (3) North 74 degrees 0 minutes 4 seconds East for a distance of 949.01 feet to an existing iron pipe, (4) North 2 degrees 11 minutes 50 seconds West for a distance of 1255.20 feet to an existing iron pipe, thence South 83 degrees 58 minutes 44 seconds East for a distance of 517.67 feet to an existing iron rod, being the northwest corner of S T Wooten Corp property as recorded in Deed Book 463, Page 60 in the Montgomery County Registry, thence South 6 degrees 50 minutes 20 seconds East along the western line of said S T Wooten property for a distance of 845.50 feet to an existing iron rod, thence North 83 degrees 21 minutes 50 seconds East along the south line of said S T Wooten property to an existing iron rod, thence South 12 degrees 9 minutes 48 seconds East along the Montgomery-Moore county line for a distance of 702.34 feet to a point on the northern right of way of NC 211, thence South 67 degrees 18 minutes 13 seconds West along said right of way for a distance of 194.55 feet to a computed point, thence South 67 degrees 42 minutes 52 seconds West along said right of way for a distance of 293.60 feet to a computed point, thence South 67 degrees 53 minutes 2 seconds West for a distance of 2262.14 feet to a computed point, thence South 68 degrees 11 minutes 3 seconds West along said right of way for a distance of 455.92 feet to the point of beginning. Containing 78.67 acres, more or less.

SECTION 2. This act becomes effective January 1, 2007.

HOUSE BILL 2491:
Candor Annexation

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 20, 2006
Introduced by:	Rep. Goodwin	**Summary by:**	Judy Collier
Version:	First Edition		Research Assistant

SUMMARY: House Bill 2491 is a local bill that would annex certain described property into the corporate limits of the Town of Candor. The bill received a favorable report from House Local Government I Committee on June 7, 2006.

CURRENT LAW: North Carolina law sets forth four (4) basic ways in which a town or city may annex an area.

1. **Voluntary Annexation**. The owners of all real property in the area desiring to be annexed sign a petition requesting annexation. Part 1 of Article 4 of Chapter 160A.
2. **Legislative Act**. The General Assembly has the authority to extend the boundaries of any town or city. This method is most helpful to a town or city trying to annex an area that they could not otherwise.
3. **Satellite Annexation**. This method allows a town or city to annex certain non-contiguous areas meeting the statutory standards into the town or city limits. Part 4 of Article 4 of Chapter 160A.
4. **Non-voluntary Annexation**. The town or city brings into the corporate limits an area that has not voluntarily agreed to be annexed. Parts 2 and 3 of Article 4 of Chapter 160A.

BILL ANALYSIS:

House Bill 2491 would annex three (3) specifically described tracts of land into the existing boundaries of the Town of Candor:

- **TRACT 1**, Hicks Property, as recorded in Deed Book 280, Page 411, Montgomery County Registry, containing 3.14 acres, more or less.
- **TRACT 2**, CP&L Property, as recorded in Deed Book 229, Page 478, Montgomery County Registry, containing 20.6 acres, more or less.
- **TRACT 3**, Maximum Property, as recorded in Deed Book 517, Page 418, Montgomery County Registry, containing 78.67 acres, more or less.

EFFECTIVE DATE: This act would become effective January 1, 2007.

BACKGROUND: The property owners have sought annexation to the Town of Candor because of a need for municipal water and sewer services to the properties described in the bill.

H2491e1-SMRE

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☐ Committee Substitute for

HB 2491 A BILL TO BE ENTITLED AN ACT TO ANNEX CERTAIN DESCRIBED TERRITORY TO THE TOWN OF CANDOR.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 2549

Short Title:	Landis Annexation/Planning.	(Local)
Sponsors:	Representatives Steen and Coates (Primary Sponsors).	
Referred to:	Local Government II, if favorable, Finance.	

May 25, 2006

A BILL TO BE ENTITLED

AN ACT TO ADD CERTAIN DESCRIBED PROPERTY TO THE CORPORATE LIMITS OF THE TOWN OF LANDIS AND TO AUTHORIZE THE TOWN TO EXERCISE PLANNING AND ZONING POWERS IN THE DESCRIBED AREA PRIOR TO ANNEXATION OF THE AREA.

The General Assembly of North Carolina enacts:

SECTION 1.(a) The following described property is added to the corporate limits of the Town of Landis:

TRACT I:

BEGINNING at a point in the center of the Fleming Crossroads and Five Forks Rd on Atwell's line: thence North 33 West with said Road 680 feet to a stake in the center of said Road, corner of Lot 2; thence South 57 West 420 feet to a stake; thence South 15 West 1650 feet to an iron stake; corner of Lot 2; thence North 88West 1318 feet to Carter's line, corner to Lot No. 1; thence South 3-3/4 West 650 feet to a stone, Carter's corner on Chester Deal's line; thence with Chester Deal's line, South 88 East 2359 feet to an iron stake on Atwell's line; thence North 4 East 1929 feet to the Beginning. Containing 71 acres, more or less. SAVE AND EXCEPT the following described real estate conveyed to Latt J. Carter and Wife, Myrtle S. Carter by deed recorded in Deed Book 337 at page 300, Rowan County Registry. Located about One mile North from Saw, near the Mill Bridge Road. Beginning at a stone and an iron pipe, Carter's corner in the line of the C.C. Deal Estate, and runs thence with the Carter line, North 3-3/4 deg. East 242 feet to an iron pipe, a new corner in the Carter Line; thence two new lines as follows: (1) South 86-3/4 deg. East 900 feet to an iron pipe, a new corner, (2) South 3-3/4 deg. West 242 feet to an iron pipe, a new corner in the Carter line; thence with the Carter line, North 86-3/4 deg West, passing the Carter corner, 900 feet to the Beginning, containing 5 acres, more or less.

TRACT II:

BEGINNING at a point on the Northern side of Brown rd. in the line of Leroy Wilhelm, this beginning point lying North 89 East 250.52 feet, more or less, from an old corner of

the C.K. Atwell property near the point where a dirt road intersects Brown Rd., this beginning point also lies south 89 West 1168.48 feet, more or less, from an old corner of C.K. Atwell and Worth Corriher in the line of Leroy Wilhelm, and runs thence along the Wilhelm line, North 89 East 1168.48 feet, more or less, to a stake , a corner of Worth Corriher; thence along the old line, the same being a line of Worth Corriher, due south 1567 feet, more or less, to a stake, an old corner; thence continuing along another line of Worth Corriher, South 89 West 1168.48 feet, more or less, to a point, a new corner, this being the corner of John K. Atwell's tract in the line of Worth Corriher: thence along a new line due North 1567.5 feet, more or less, to a point in the old line, the point of Beginning. Said tract containing 42.048 acres. LESS AND EXCEPT 3.97 Acres more or less. Reference tax parcel ID 223-036

TRACT III:

BEGINNING at a stone in the field on the west side of a dirt road running between Brown Rd. and Patterson Rd., this beginning point being a corner of lots Nos. 4 and 5 as shown on the map of "L.A. Corriher's Mt. Moriah Church Farm", being also a corner of George R. Fleming, Hubert I. Patterson and Leonard Patterson, and also being an old original corner of the C.K. Atwell Property, and runs thence along the old line, the same being the line of Lot No. 5 as shown on the map of the "I.A. Corriher's Mt. Moriah Church Farm" property, South 85 East 381 feet to a state, corner of Tract No. 5 and also an old corner; thence continuing along the old line, the same being a line of Leroy Wilhelm, due south 1699.5, 5 feet to a stake, an old corner; thence continuing along the old line and along Wilhelm's line, North 89 East 250.52 feet to a point, a new corner, this corner lying South 89 East 1168.48 feet from the corner of Sue Evelyn Atwell and Worth Corriher; thence along a new line running due South 1567.5 feet, more or less, to a point, a new corner in the old line, said line being an old line of Worth Corriher; thence with Corriher's line and continuing with the line of Latt J. Carter, South 89 West 745.52 feet; more or less, to a stake, corner of Tract No. 3 as shown on the map of "L.A. Corriher's Mt. Moriah Church Farm", this being a corner of Lamont Goodnight; thence along Goodnight's line and along the line of Tract No. 3 North 4 East 1983 feet to a stone on the North side of Brown Rd.. said stone being in the line of Tract No. 4; thence continuing along the line of Tract 4. North 3-15 East 1373 feet to a stone, the point of BEGINNING.

TRACT IV:

BEGINNING at a stake on bank of branch Sloan Freeze's corner; thence N. 4 E. 14.17 chains to a stone S.G. Pethel's corner; thence S. 24 E. 10.00 chains to a persimmon tree Pethel's corner; thence S. 60 W. 2.60 chains to a cedar; thence N. 80 W. 3.23 chains to an ash; thence S. 77 W. 3.06 chains to poplar; thence S. 76 W. 7.73 chains to the BEGINNING, containing 16 1/10 acres more or less.

TRACT V:

On the Waters of Grant's Creek, BEGINNING at a black jack on Bostian's line and runs South 74 poles to a hickory; thence South 89 West 176 poles to a Spanish oak; thence North 74 poles to a Sourwood; thence North 89 East 176 poles to the BEGINNING, containing (85) acres, more or less. LESS AND EXCEPT all the portion of land located on the west side of Millbridge Rd. containing 32.43 acres more or less.

TRACT VI:
BEGINNING at a nail and cap at the intersection of the center lines of Mill Bridge Rd. (State Road No. 1350) and Concordia Church Rd. (State Rd. No. 1554) and runs thence with the center line of Mill Bridge Road South 6 deg. 45 min West 114 feet to a point in the center line of said rd; thence three new lines with Wilma D. Carrigan as follows: (1) South 84 deg. 30 min. East 566.7 feet to an iron rod; and (3) North 79 deg. 53 min. West 596.8 feet to an iron cap in the center line of Mill Bridge Rd; thence with the center line of Millbridge Rd. South 2 deg. 13 min West 297.9 feet to the point of BEGINNING, and containing 5.2 acres, said description being in accordance with map prepared for Wilma D. Carrigan dated May 25, 1976 by Hudson and Almond Surveyors.
TRACT VII:
BEGINNING at an existing iron, said iron further referenced as being the southeast corner of Ruth Freeze, Larry Freeze, and Valerie Freeze as found in Deed Book 802, page 148 and further referenced as Tax Map 225 Parcel 003 and further referenced as being the northeast corner of Freddie D. Freeze as found in Deed Book 690, Page 895 and further referenced as Tax Map 225, Parcel 062; thence continuing along a new line South 76 deg. 43 min 32 sec East 2,370.31 feet to an existing iron rod being located in the line of a lake for the Town of Landis; thence continuing along border of said lake, South 19 deg. 59 deg. 34 sec. west 97.00 feet to a point; thence continuing South 39 deg. 03 min. 34 sec. West 170.05 feet; thence continuing South 32 deg, 5 min. 04 sec. West 149.67 feet; thence South 35 deg. 33 min 25 sec. West 18.72 feet to a point; thence North 85 deg. 31 min. 52 sec East 100.00 Feet to a point; thence North 51 deg. 35 min. 58 sec. west 148.00 feet to a point; thence continuing North 67 deg. 12 min. 21 sec. West 1,738.38 feet to a point; thence continuing North 86 deg. 41 min 30 sec. West 230.22 feet to a point; thence continuing North 26 deg. 39 min. 38 sec. West 94.19 feet to the point of BEGINNING.
TRACT VIII:
BEGINNING at a computed point in the centerline of N.C. Highway 152 and in the corner of a 3.943 acre tract: thence with said 3.943 acre tract North 15 degrees 32 minutes 56 seconds West passing an existing #5 rebar at 51.14 feet for a total distance of 388.78 feet to an existing #5 rebar in the line of a 3.943 acre tract; thence with said 3.943 acre tract North 21 degrees 44 minutes 35 seconds West passing an existing #5 rebar 201.36 feet for a total distance of 406.96 feet to an existing #5 rebar in the line of a 3.943 acre tract; thence with said 3.943 acre tract North 88 degrees 00 minutes 00 seconds West 67.73 feet to an existing #5 rebar at the corner of a 3.943 acre tract and Harrill S. Wiggins; thence with Wiggins North 02 degrees 00 minutes 00 seconds East passing an existing 1" pipe at 671.74 feet for a total distance of 1329.79 feet to an existing 1" pipe in the corner of Murrah A. Corriher; thence with the Corriher North 88 degrees 00 minutes 00 seconds West 394.32 feet to a set #5 rebar in the corner of Murray A. Corriher; thence with the Corriher North 03 degrees 18 minutes 47 seconds East passing an existing 1.5" pipe at 465.69 feet for a total distance of 632.72 feet to a pipe in R.S. Freeze's line; thence with Freeze North 02 degrees 33 minutes 35 seconds east 4.76 feet to an existing stone in the corner of R.S. Freeze and S.E. Campbell, thence

with Campbell North 42 degrees 19 minutes 54 seconds east 394.74 feet to an existing 36" sweet gum in the corner of S.E. Campbell; thence with Campbell following the courses and distances: (1) South 13degrees 08 minutes 55 seconds East 280.34 feet to an existing ½" pipe; thence (2) South 14degrees 02 minutes 57 seconds West 166.00 feet to an existing #8 rebar; thence (3) South 89 degrees 11 minutes 23 seconds East 974.81 feet to an existing railroad spike in the corner of S.E. Campbell and J.A. Lipe Heirs; thence with Lipe South 02 degrees 42 minutes 38 seconds West 2,024.40 feet to a nail in the corner of Johnsie Deaton Fisher and Wiley Dale Wilson; thence with Wilson North 87 degrees 46 minutes 45 seconds West 15 feet to an existing 5" flat bar in the corner of Wiley Dale Wilson; thence with Wilson South 02 degrees 37 minutes 01 seconds West passing an existing 5" flat bar at 500.66 feet for a total distance of 527.35 feet to a computed point in the centerline of N.C. Highway 152; thence with N.C. Highway 152 South 84 degrees 05minutes 14 seconds West 312.09 feet to the place and point of BEGINNING and containing 51.831 acres as shown on the boundary survey of the Stewart M. Beaver Estate prepared by Rufus Jackson Love, R.L.S. dated September 24, 1996.

TRACT IX:

BEGINNING at a 1" iron spike, said spike being located in centerline of the margin of the right-of-way for Lake Wright Road and further referenced as being located in the common lines of R. Brian Johnson as found in Deed Book 792, Pages 931 and 932, the same being designated in Rowan County Tax Supervisor's Office as being Tax Map 225, Parcel 72 and in the common line of Wallace G. Lyerly as found in Deed Book 571, Page 465, the same being designated in the Rowan County Tax Supervisor's Office as being Tax Map 120, Parcel 4, said point further referenced as being located North 50 deg. 54 min. 16 sec. West 664.96 feet from a computed point, said computed point being located along the centerline of the intersection of Lake Wright Road and N.C. Highway 152, said point further referenced as being located South 80 deg. 19 min. 15 sec. West 267.15 feet from an existing iron spike, said iron spike being the common corner of two separate tracts as purchased by R. Brian Johnson, the same being designated in the Rowan County Tax Supervisor's Office as being Tax Map 225, Parcel 72 and Tax Map 120, Parcel 5; thence, from the point of BEGINNING the following courses and distances: North 50 deg. 54 min. 16 sec. West 389.78 feet to a 4" flat blade, said blade being the common corner of Wallace G. Lyerly and the common corners of Lots Nos. 10 and 11, the Fisher Farm Estates, as found in the Rowan County Register of Deeds Office at Book of Maps, Page 3218; thence continuing North 49 deg. 59 min. 54 sec. West 794.72 feet to a 1-1/4" existing iron rod, said iron rod being the common corner of Lots Nos. 7 and 8; thence continuing North 49 deg. 31 min. 21 sec. West 55.17 feet to a 1/2" iron pin, said iron pin being the common corner of Jeffrey L. McCollum; thence continuing along the common line of Jeffrey L. McCollum North 49 deg. 31 min. 14 sec. West 420.99 feet to a 1/2" existing iron pin, said iron pin being the common corner of J. A. Deaton Properties, LTD, and Jeffrey L. McCollum; thence continuing along the common line of J. A. Deaton Properties, LTD, North 49 deg. 31 min. 14 sec West 421 feet to an existing iron pin, said iron pin being located in the common line of Sandra Lee Sinclair as found in Deed Book 787, Page 828; thence

continuing along the common line of Sandra Lee Sinclair North 1 deg. 31 min. 47 sec. East 451.33 feet to an existing spike, said spike in a leaning 20" maple, said spike further referenced as being the common corner of Sandra Lee Sinclair and Steven E. Campbell as found in Deed Book 565, Page 731; thence continuing along the common line of Steven E. Campbell the following courses and distances: North 1 deg. 47 min. 20 sec East 403.78 feet (passing a nail set in a 1" iron rod .28' Southeast of property line at 203.60 feet) to an existing nail, said nail being located by 5/8" existing iron rod; thence continuing North 47 deg. 00 min. 24 sec. East 618.11 feet (passing a 1" existing iron rod, the same being .61' Northwest of property line at 417.13 feet) to an existing nail by a 5/8" existing iron rod, said iron rod being the common corner of Steven E. Campbell and The Warrior Golf Club, LLC, as found in Deed Book 796, Page 409; thence continuing along the common line of The Warrior Golf Club, LLC, South 88 deg. 24 min. 30 sec. East 776.04 feet to an existing nail by a 1" existing iron rod, the same being the common corner of The Warrior Golf Club, LLC, as designated in Rowan County Tax Supervisor's Office as being Tax Map 225, Parcels 76 and 5; thence continuing along the common line of The Warrior Golf Club, LLC, South 87 deg. 15 min. 46 sec. East. 386.24 feet (passing a ½" existing iron rod at 312.82 feet, the same being the common corner of Thomas E. Tweed as found in Deed Book 712, Page 265) to a new iron pin, said iron pin being located along an existing stone and being the common line of Thomas E. Tweed; thence continuing along the common line of Thomas E. Tweed South 89 deg. 25 min. 33 sec. East 154.3 feet to a new iron pin, said iron pin being located on the right-of-way of Lake Wright Road and being the common corner of Thomas E. Tweed; thence continuing within the margin of the right-of-way for Lake Wright Road South 89 deg. 25 min. 33 sec East 25.64 feet to a computed point, said computed point being the centerline of Lake Wright Road and further referenced as being located North 89 deg. 25 min. 33 sec. West 21.28 feet from the common corner of R. Brian Johnson as found in Deed Book 792, Pages 931 and 932; thence, continuing with the margin of a right-of-way for Lake Wright Road, the following courses and distances: (1) South 13 deg. 22 min. 6 sec. West 620.54 feet; (2) South 12 deg. 47 min. 47 sec. West 599.16 feet; (3) along a curve having a radius of 1227.70 feet with a chord bearing and distance of South 6 deg. 39 min. 15 sec. West 262.70 feet and an arc length of 263.20 feet; (4) South 0 deg. 30 min. 47 sec. West 562,52 feet to a point; (5) along a curve having a radius of 804. 15 feet with a chord bearing and distance of South 4 deg. 43 min. 51 sec. West 118.30 feet and an arc length of 118.40 feet; (6) South 8 deg. 56 min. 58 sec. West 80.89 feet; and (7) along a curve having a radius of 439.02 feet with a chord bearing and distance of 16 deg. 43 min. 26 sec. East 380.40 feet and an arc length of 393.44 feet. LESS AND EXCEPTING, HOWEVER, all of Lots Numbers 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13, as shown upon the map of WRIGHT FIELD, recorded in Map Book 9995, at Page 4481, Rowan County Registry. The property conveyed herewith is all of Parcel 006 on Rowan County Tax Map 225.

SECTION 1.(b) This section becomes effective September 30, 2007.

SECTION 2. Notwithstanding subsection 1(b) of this act, the Town of Landis may begin to exercise its planning and zoning powers under Article 19 of

Chapter 160A of the General Statutes in the area described in subsection 1(a) of this act after the date that this act becomes law.

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

HOUSE BILL 2549:
Landis Annexation/Planning

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 20, 2006
Introduced by:	Reps. Steen, Coates	**Summary by:**	Judy Collier
Version:	First Edition		Research Assistant

SUMMARY: House Bill 2549 is a local bill that would annex certain described property to the corporate limits of the Town of Landis, effective September 30, 2007, and authorizes the Town to begin exercising its planning and zoning powers in the described area prior to the effective date of annexation. The bill received a favorable report from House Local Government II Committee on June 7, 2006.

CURRENT LAW: North Carolina law sets forth four (4) basic ways in which a town or city may annex an area.

1. **Voluntary Annexation**. The owners of all real property in the area desiring to be annexed sign a petition requesting annexation. Part 1 of Article 4 of Chapter 160A.
2. **Legislative Act**. The General Assembly has the authority to extend the boundaries of any town or city. This method is most helpful to a town or city trying to annex an area that they could not otherwise.
3. **Satellite Annexation**. This method allows a town or city to annex certain non-contiguous areas meeting the statutory standards into the town or city limits. Part 4 of Article 4 of Chapter 160A.
4. **Non-voluntary Annexation**. The town or city brings into the corporate limits an area that has not voluntarily agreed to be annexed. Parts 2 and 3 of Article 4 of Chapter 160A.

BILL ANALYSIS:

House Bill 2549 would annex nine (9) specifically described tracts of land into the existing corporate limits of the Town of Landis.

EFFECTIVE DATE: The annexation becomes effective September 30, 2007. However, this act would become effective when it becomes law.

BACKGROUND: On May 15, 2006, the Town of Landis passed a Resolution in favor of annexing the described properties situated around Lake Wright in Rowan County. The Town has infrastructure in this area and also owns Lake Wright which is a drinking water reservoir. All property owners, including Warrior Golf Club, are in support of this legislation. The nearby municipality of China Grove has no opposition to this special legislation.

H2549e1-SMRE

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☐ Committee Substitute for

HB 2549 A BILL TO BE ENTITLED AN ACT TO ADD CERTAIN DESCRIBED PROPERTY TO THE CORPORATE LIMITS OF THE TOWN OF LANDIS AND TO AUTHORIZE THE TOWN TO EXERCISE PLANNING AND ZONING POWERS IN THE DESCRIBED AREA PRIOR TO ANNEXATION OF THE AREA.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 2170
PROPOSED COMMITTEE SUBSTITUTE H2170-CSLY-70 [v.7]

6/17/2006 3:05:12 PM

Short Title: Bill Lee Changes. (Public)

Sponsors:

Referred to:

May 18, 2006

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.

The General Assembly of North Carolina enacts:

PART I. REPLACEMENT OF BILL LEE ACT

SECTION 1.1. 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.

(3) The economic condition of the State is not static and recent changes in the State's economic condition have created economic distress that requires a reevaluation of certain existing State programs and the enactment of a new program as provided in this Article that is designed to stimulate new economic activity and to create new jobs within the State.

(4) The enactment of this Article is necessary to stimulate the economy and create new jobs in North Carolina; and this Article will promote the general welfare and confer, as its primary purpose and effect, benefits on citizens throughout the State through the creation of new jobs, an enlargement of the overall tax base, an expansion and diversification of the State's industrial base, and an increase in revenue to the State and its political subdivisions.

(5) The purpose of this Article is to stimulate economic activity and to create new jobs within the State.

(6) The State is in need of a focused tax credit program that encourages and facilitates economic growth and development within the State.

(7) The resources of the State are not evenly distributed throughout the State and different communities have different abilities and needs in attracting and maintaining new and expanding business and industry.

"**§ 105-129.71. Definitions.**

The following definitions apply in this Article:

(1) Aircraft maintenance and repair. – The provision of specialized maintenance or repair services for commercial aircraft or the rebuilding of commercial aircraft.

(2) Air courier services. – The furnishing of air delivery of individually addressed letters and packages for compensation, in interstate commerce, except by the United States Postal Service.

(3) Business property. – Tangible personal property that is used in a business and capitalized under the Code.

(4) Company headquarters. – A corporate, subsidiary, or regional managing office, as defined by NAICS in United States industry 551114, that is responsible for strategic or organizational planning and decision making for the business on an international, national, or multistate regional basis.

(5) Cost. – In the case of property owned by the taxpayer, cost is determined pursuant to regulations adopted under section 1012 of the Code. In the case of property the taxpayer leases from another, cost is value as determined pursuant to G.S. 105-130.4(j)(2).

(6) Customer service call center. – The provision of support service by a business to its customers by telephone or other electronic means to support products or services of the business. For the purposes of this definition, an establishment is primarily engaged in providing support services by telephone or other electronic means only if at least sixty

percent (60%) of its calls are incoming or at least sixty percent (60%) of its other electronic communications are initiated by its customers.

(7) Development tier. – The classification assigned to an area pursuant to G.S. 143B-437.08.

(8) Electronic shopping and mail order houses. – An industry in electronic shopping and mail order houses industry group 4541 as defined by NAICS.

(9) Establishment. – Defined in 29 C.F.R § 1904.46, as it existed on January 1, 2002.

(10) Full-time job. – A position that requires at least 1,600 hours of work per year and is intended to be held by one employee during the entire year. A full-time employee is an employee who holds a full-time job.

(11) Hub. – Defined in G.S. 105-164.3.

(12) Information technology and services. – An industry in one of the following:

a. Internet service providers, Web search portals, and data processing subsector 518 as defined by NAICS.

b. Software publishers industry group 5112 as defined by NAICS.

c. Computer systems design and related services industry group 5415 as defined by NAICS.

(13) Long-term unemployed worker. – An individual that has been totally unemployed for at least the preceding 26 consecutive weeks as evidenced by records maintained by the Employment Security Commission.

(14) Manufacturing. – An industry in manufacturing sectors 31 through 33, as defined by NAICS, but not including quick printing or retail bakeries.

(15) Motorsports facility. – A motorsports racetrack classified in the United States racetrack national industry 711212, as defined by NAICS.

(16) Motorsports racing team. – A professional racing team primarily engaged in the research and development, design, manufacture, repair, maintenance, and operation of motor vehicles used in live motorsports racing events before a paying audience.

(17) NAICS. – The North American Industry Classification System adopted by the United States Office of Management and Budget as of December 31, 2002.

(18) New job. – A full-time job that represents a net increase in the number of the taxpayer's employees statewide. A new employee is an employee who holds a new job. The term does not include a job currently located in this State that is transferred to the business from a related member of the business.

(19) Overdue tax debt. – Defined in G.S. 105-243.1.

(20) Purchase. – Defined in section 179 of the Code.

(21) Related member. – Defined in G.S. 105-130.7A.

(22) Research and development. – An industry in scientific research and development services industry group 5417 as defined by NAICS.
(23) Urban progress zone. – The classification assigned to an area pursuant to G.S. 143B-437.09.
(24) Warehousing. – An industry in warehousing and storage subsector 493 as defined by NAICS.
(25) Wholesale trade. – An industry in wholesale trade sector 42 as defined by NAICS.

"**§ 105-129.72. Sunset; studies.**

(a) Sunset. – This Article is repealed effective for business activities that occur on or after January 1, 2011.

(b) Equity Study. – The Department of Commerce shall study the effect of the tax incentives provided in this Article on tax equity. This study shall include the following:

(1) Reexamining the formula in G.S. 143B-437.08 used to define development tiers, to include consideration of alternative measures for more equitable treatment of counties in similar economic circumstances.
(2) Considering whether the assignment of tiers and the applicable thresholds are equitable for smaller counties.
(3) Compiling any available data on whether expanding North Carolina businesses receive fewer benefits than out-of-State businesses that locate to North Carolina.

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

(1) Studying the distribution of tax incentives across new and expanding businesses and industries.
(2) Examining data on economic recruitment for the period from 2005 through the most recent year for which data are available by county, by industry type, by size of investment, and by number of jobs, and other relevant information to determine the pattern of business locations and expansions before and after the enactment of this Article.
(3) Measuring the direct costs and benefits of the tax incentives.
(4) Compiling available information on the current use of incentives by other states and whether that use is increasing or declining.

(d) Report. – The Department of Commerce shall report the results of these studies and its recommendations to the General Assembly biennially with the first report due by June 1, 2009.

"**§ 105-129.73. Eligibility; forfeiture.**

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

(1) Aircraft maintenance and repair.
(2) Air courier services hub.
(3) Company headquarters, but only if the additional eligibility requirements of subsection (b) of this section are satisfied.
(4) Customer service call centers.
(5) Electronic shopping and mail order houses.
(6) Information technology and services.
(7) Manufacturing.
(8) Motorsports facility.
(9) Motorsports racing team.
(10) Research and development.
(11) Warehousing.
(12) Wholesale trade.

(b) Company Headquarters Eligibility. – A taxpayer is eligible for a credit under this Article with respect to a company headquarters only if the taxpayer creates at least 75 new jobs at the company headquarters within a 24-month period. A taxpayer that meets this job creation requirement is eligible for credits under this Article with respect to the company headquarters for three taxable years beginning with the year in which the job creation requirement is satisfied. A taxpayer that creates an additional 75 new jobs at the company headquarters in a 24-month period during a three-year eligibility period does not qualify for any extended eligibility period. However, a taxpayer that creates an additional 75 new jobs at the company headquarters in a 24-month period after the completion of a three-year eligibility period is eligible for credits with respect to the company headquarters for an additional three taxable years beginning in the year in which the additional job creation requirement is satisfied.

(c) Wage Standard. – A taxpayer is eligible for a credit under this Article in a development tier two or three area only if the taxpayer satisfies a wage standard. The taxpayer is not required to satisfy a wage standard if the activity occurs in a development tier one area. Jobs that are located within an urban progress zone satisfy the wage standard if they pay an average weekly wage that is at least equal to ninety percent (90%) of the lesser of the average wage for all insured private employers in the State and the average wage for all insured private employers in the county. All other jobs satisfy the wage standard if they pay an average weekly wage that is at least equal to the lesser of one hundred ten percent (110%) of the average wage for all insured private employers in the State and ninety percent (90%) of the average wage for all insured private employers in the county. The Department of Commerce shall annually publish the wage standard for each county.

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

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

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

(e) Environmental Impact. – A taxpayer is eligible for a credit allowed under this Article only if the taxpayer certifies that, at the time the taxpayer claims the credit, at the establishment with respect to which the credit is claimed, the taxpayer has no pending administrative, civil, or criminal enforcement action based on alleged significant violations of any program implemented by an agency of the Department of Environment and Natural Resources, and has had no final determination of responsibility for any significant administrative, civil, or criminal violation of any program implemented by an agency of the Department of Environment and Natural Resources within the last five years. A significant violation is a violation or alleged violation that does not satisfy any of the conditions of G.S. 143-215.6B(d). The Secretary of Environment and Natural Resources shall notify the Department of Revenue annually of every person that currently has any of these pending actions and every person that has had any of these final determinations within the last five years.

(f) Safety and Health Programs. – A taxpayer is eligible for a credit allowed under this Article only if the taxpayer certifies that, as of the time the taxpayer claims the credit, at the establishment with respect to which the credit is claimed, the taxpayer has no citations under the Occupational Safety and Health Act that have become a final order within the past three years for willful serious violations or for failing to abate serious violations. For the purposes of this subsection, 'serious violation' has the same meaning as in G.S. 95-127. The Commissioner of Labor shall notify the Department of Revenue annually of all employers who have had these citations become final orders within the past three years.

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

(h) Expiration. – If, during the period that installments of a credit under this Article accrue, the taxpayer is no longer engaged in one of the types of business described in subsection (a) of this section at the establishment for which the credit was claimed, the credit expires. If, during the period that installments of a credit under this

Article accrue, the number of jobs of an eligible company headquarters falls below the minimum number required under subsection (b) of this section, any credit associated with that company headquarters expires. When a credit expires, the taxpayer may not take any remaining installments of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.74. A change in the development tier designation of the location of an establishment does not result in expiration of a credit under this Article.

(i) Forfeiture. – A taxpayer forfeits a credit allowed under this Article if the taxpayer was not eligible for the credit for the calendar year in which the taxpayer engaged in the activity for which the credit was claimed. In addition, a taxpayer forfeits a credit for investment in real property under G.S. 105-129.79 if the taxpayer fails to timely create the number of required new jobs or to timely make the required level of investment under G.S. 105-129.79(b). A taxpayer that forfeits a credit under this Article is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236.

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

(1) The business closed before it was acquired.

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

(3) The business was acquired by its employees directly or indirectly through an acquisition company under an employee stock option transaction or another similar mechanism. For the purpose of this subdivision, 'acquired' means that as part of the initial purchase of a business by the employees, the purchase included an agreement for the employees through the employee stock option transaction or another similar mechanism to obtain one of the following:

a. Ownership of more than fifty percent (50%) of the business.

b. Ownership of not less than forty percent (40%) of the business within seven years if the business has tangible assets with a net book value in excess of one hundred million dollars

($100,000,000) and has the majority of its operations located in a development tier one area.

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

(l) Planned Expansion. – A taxpayer that signs a letter of commitment with the Department of Commerce, after the Department has calculated the development tier designations for the next year but before the beginning of that year, to undertake specific activities at a specific site within the next two years may calculate the credit for which it qualifies based on the establishment's development tier designation and urban progress zone designation in the year in which the letter of commitment was signed by the taxpayer. If the taxpayer does not engage in the activities within the two-year period, the taxpayer does not qualify for the credit; however, if the taxpayer later engages in the activities, the taxpayer qualifies for the credit based on the development tier and urban progress zone designations in effect at that time.

"**§ 105-129.74. Tax election; cap; carryforwards; limitations.**

(a) Tax Election. – The credits provided in this Article are allowed against the franchise tax levied in Article 3 of this Chapter, the income taxes levied in Article 4 of this Chapter, and the gross premiums tax levied in Article 8B of this Chapter. The taxpayer may divide a credit between the taxes against which it is allowed. Carryforwards of a credit may be divided between the taxes against which it is allowed without regard to the original election regarding the division of the credit.

(b) Cap. – The credits allowed under this Article may not exceed fifty percent (50%) of the cumulative amount of taxes against which they may be claimed for the taxable year, reduced by the sum of all other credits allowed against those taxes, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of credit, including carryforwards, claimed by the taxpayer under this Article for the taxable year.

(c) Carryforward. – Unless a longer carryforward period applies, any unused portion of a credit allowed under G.S. 105-129.77 or G.S. 105-129.78 may be carried forward for the succeeding five years and any unused portion of a credit allowed under G.S. 105-129.79 may be carried forward for the succeeding 15 years. If the Secretary of Commerce makes a written determination that the taxpayer is expected to purchase or lease, and place in service in connection with an eligible business within a two-year period, at least one hundred fifty million dollars ($150,000,000) worth of business and real property, any unused portion of a credit under this Article with respect to the establishment that satisfies that condition may be carried forward for the succeeding 20 years. If the taxpayer does not make the required level of investment, the taxpayer shall apply the five-year carryforward period rather than the 20-year carryforward period.

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

"**§ 105-129.75. Fees and reports.**

(a) Fee. – When filing a return for a taxable year in which the taxpayer engaged in activity for which the taxpayer is eligible for a credit under this Article, the taxpayer shall pay the Department of Revenue a fee of five hundred dollars ($500.00) for each type of credit the taxpayer claims or intends to claim with respect to an establishment. The fee is due at the time the return is due for the taxable year in which the taxpayer engaged in the activity for which the taxpayer is eligible for a credit. No credit is allowed under this Article for a taxable year until all outstanding fees have been paid. Fees collected under this section shall be credited to the General Fund.

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

(1) The number and amount of credits generated and taken for each credit allowed in this Article.

(2) The number and development tier area of new jobs with respect to which credits were generated and to which credits were taken.

(3) The cost and development tier area of business property with respect to which credits were generated and to which credits were taken.

(4) The cost and development tier area of real property investment with respect to which credits were generated and to which credits were taken.

"**§ 105-129.76. Substantiation.**

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

(b) Documentation. – Each taxpayer shall provide with the tax return qualifying information for each credit claimed under this Article. The qualifying information shall be in the form prescribed by the Secretary and shall 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 establishment.

(2) The type of business with respect to which the credit is claimed and the average weekly wage at the establishment with respect to which the credit is claimed.

(3) Any other qualifying information related to a specific credit allowed under this Article.

"**§ 105-129.77. Credit for creating jobs.**

(a) Credit. – A taxpayer that meets the eligibility requirements set out in G.S. 105-129.73 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 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. If the job is located in an urban progress zone, the amount of the credit is increased by one thousand dollars ($1,000) per job. In addition, if a job located in an urban progress zone is filled by a resident of that zone or by a long-term unemployed worker, the amount of the credit is increased by an additional two thousand dollars ($2,000) per job.

Area Development Tier	Amount of Credit
Tier One	$12,500
Tier Two	5,000
Tier Three	750

(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. If the taxpayer creates new jobs in an urban progress zone, the applicable threshold is the one for a development tier one area.

Area Development Tier	Threshold
Tier One	5
Tier Two	10
Tier Three	15

(c) Calculation. – A job is located in a county or urban progress zone if more than fifty percent (50%) of the employee's duties are performed in the county or the zone. The number of new jobs a taxpayer creates during the taxable year is determined by subtracting the average number of full-time employees the taxpayer had in this State during the 12-month period preceding the beginning of the taxable year from the average number of full-time employees the taxpayer has in this State during the taxable year.

(d) Installments. – The credit may not be taken in the taxable year in which the new jobs are created. Instead, the credit shall be taken in equal installments over the four years following the taxable year in which the new jobs were created and is conditional upon the continued maintenance of those jobs by the taxpayer. If, in one of the four years in which the installment of a credit accrues, a job is no longer filled, the credit with respect to that job expires and the taxpayer may not take any remaining installment of the credit with respect to that job. If, in one of the years in which the installment of a credit accrues, the number of the taxpayer's full-time employees falls

below the sum of the applicable threshold and the number of full-time employees the taxpayer had in the year before the year in which the taxpayer qualified for the credit, the credits with respect to all of the new jobs expire, and the taxpayer may not take any remaining installments of the credits. When a credit expires under this subsection, the taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.74.

(e) Transferred Jobs. – Jobs transferred from one area in the State to another area in the State are not considered new jobs for purposes of this section. Jobs that were located in this State and that are transferred to the taxpayer from a related member of the taxpayer are not considered new jobs for purposes of this section. If, in one of the four years in which the installment of a credit accrues, the job with respect to which the credit was claimed is moved to an area in a higher-numbered development tier or out of an urban progress zone, the remaining installments of the credit are allowed only to the extent they would have been allowed if the job was initially created in the area to which it was moved. If, in one of the years in which the installment of a credit accrues, the job with respect to which the credit was claimed is moved to an area in a lower-numbered development tier or an urban progress zone, the remaining installments of the credit shall be calculated as if the job had been created initially in the area to which it was moved.

(f) Wage Standard. – For the purposes of this section, a taxpayer satisfies the wage standard requirement of G.S. 105-129.73 only if the taxpayer satisfies the requirement with respect to both the new jobs, considered collectively, for which a credit is claimed and all of the jobs at the establishment, considered collectively, with respect to which a credit is claimed.

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

"**§ 105-129.78. Credit for investing in business property.**

(a) General Credit. – A taxpayer that meets the eligibility requirements set out in G.S. 105-129.73 and that has purchased or leased business property and placed it in service in this State during the taxable year and that has satisfied the threshold requirements of subsection (c) of this section is allowed a credit equal to the applicable percentage of the excess of the eligible investment amount over the applicable threshold. If the taxpayer places business property in service in an urban progress zone, the applicable percentage is the one for a development tier one area. Business property is eligible if it is not leased to another party. The credit may not be taken for the taxable year in which the business property is placed in service but shall be taken in equal installments over the four years following the taxable year in which it is placed in service. The applicable percentage is as follows:

Area Development Tier	Applicable Percentage
Tier One	7%
Tier Two	5%
Tier Three	3.5%

(b) Eligible Investment Amount. – The eligible investment amount is the lesser of (i) the cost of the eligible business property and (ii) the amount by which the cost of

all of the taxpayer's eligible business property that is in service in this State on the last day of the taxable year exceeds the cost of all of the taxpayer's eligible business property that was in service in this State on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer had the most eligible business property in service in this State.

(c) Threshold. – The applicable threshold is the appropriate amount set out in the following table based on the development tier where the eligible business property is placed in service during the taxable year. If the taxpayer places business property in service in an urban progress zone, the applicable threshold is the one for a development tier one area. If the taxpayer places eligible business property in service at more than one establishment in a county during the taxable year, the threshold applies to the aggregate amount of eligible business property placed in service during the taxable year at all establishments in the county. If the taxpayer places eligible business property in service at establishments in different counties, the threshold applies separately to the aggregate amount of eligible business property placed in service in each county. If the taxpayer places eligible machinery and equipment in service at an establishment over the course of a two-year period, the applicable threshold for the second taxable year is reduced by the eligible investment amount for the previous taxable year.

Area Development Tier	**Threshold**
Tier One	$ -0-
Tier Two	1,000,000
Tier Three	2,000,000

(d) Expiration. – As used in this subsection, the term 'disposed of' means disposed of, taken out of service, or moved out of State. If, in one of the four years in which the installment of a credit accrues, the business property with respect to which the credit was claimed is disposed of, the credit expires, and the taxpayer may not take any remaining installment of the credit for that business property unless the cost of that business property is offset in the same taxable year by the taxpayer's new investment in eligible business property placed in service in the same county, as provided in this subsection. If, during the taxable year, the taxpayer disposed of the business property for which installments remain, there has been a net reduction in the cost of all the taxpayer's eligible business property that are in service in the same county as the business property that was disposed of, and the amount of this reduction is greater than twenty percent (20%) of the cost of the business property that was disposed of, then the credit for the business property that was disposed of expires. If the amount of the net reduction is equal to twenty percent (20%) or less of the cost of the business property that was disposed of, or if there is no net reduction, then the credit does not expire. In determining the amount of any net reduction during the taxable year, the cost of business property the taxpayer placed in service during the taxable year and for which the taxpayer claims a credit under Article 3A or Article 3B of this Chapter may not be included in the cost of all the taxpayer's eligible business property that is in service. If in a single taxable year business property with respect to two or more credits in the same county are disposed of, the net reduction in the cost of all the taxpayer's eligible business property that is in service in the same county is compared to the total cost of all

the business property for which credits expired in order to determine whether the remaining installments of the credits are forfeited.

The expiration of a credit does not prevent the taxpayer from taking the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.74.

(e) Transferred Property. – If, in one of the four years in which the installment of a credit accrues, the business property with respect to which the credit was claimed is moved to a county in a higher-numbered development tier or to an urban progress zone, the remaining installments of the credit are allowed only to the extent they would have been allowed if the business property had been placed in service initially in the area to which it was moved. If, in one of the four years in which the installment of a credit accrues, the business property with respect to which a credit was claimed is moved to a county in a lower-numbered development tier or an urban progress zone, the remaining installments of the credit shall be calculated as if the business property had been placed in service initially in the area to which it was moved.

(f) Wage Standard. – For the purposes of this section, a taxpayer satisfies the wage standard requirement of G.S. 105-129.73 only if the taxpayer satisfies the requirement with respect to all of the jobs at the establishment, considered collectively, with respect to which a credit is claimed.

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

"**§ 105-129.79. Credit for investment in real property.**

(a) Credit. – If a taxpayer that has purchased or leased real property in a development tier one area begins to use the property in an eligible business during the taxable year, the taxpayer is allowed a credit equal to thirty percent (30%) of the eligible investment amount if all of the eligibility requirements of G.S. 105-129.73 and of subsection (b) of this section are met. For the purposes of this section, property is located in a development tier one area if the area the property is located in was a development tier one area at the time the taxpayer made a written application for the determination required under subsection (b) of this section. The eligible investment amount is the lesser of (i) the cost of the property and (ii) the amount by which the cost of all of the real property the taxpayer is using in this State in an eligible business on the last day of the taxable year exceeds the cost of all of the real property the taxpayer was using in this State in an eligible business on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer was using the most real property in this State in an eligible business. In the case of property that is leased, the cost of the property is not determined as provided in G.S. 105-129.71 but is considered to be the taxpayer's lease payments over a seven-year period, plus any expenditures made by the taxpayer to improve the property before it is used by the taxpayer if the expenditures are not reimbursed or credited by the lessor. The entire credit may not be taken for the taxable year in which the property is first used in an eligible business but shall be taken in equal installments over the seven years following the taxable year in which the property is first used in an eligible business. When part of

the property is first used in an eligible business in one year and part is first used in an eligible business in a later year, separate credits may be claimed for the amount of property first used in an eligible business in each year. The basis in any real property for which a credit is allowed under this section shall be reduced by the amount of credit allowable.

(b) Determination by the Secretary of Commerce. – A taxpayer is eligible for the credit allowed under this section with respect to an establishment only if the Secretary of Commerce makes a written determination that the taxpayer is expected to purchase or lease and use in an eligible business at that establishment within a three-year period at least ten million dollars ($10,000,000) of real property and that the establishment that is the subject of the credit will create at least 200 new jobs within two years of the time that the property is first used in an eligible business. If the taxpayer fails to timely make the required level of investment or fails to timely create the required number of new jobs, the taxpayer forfeits the credit as provided in G.S. 105-129.73.

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

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

In each of these cases, the taxpayer may nonetheless take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.74.

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

SECTION 1.2. Part 2 of Article 10 of Chapter 143B is amended by adding two new sections to read:

"**§ 143B-437.08. Development tier designation.**

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

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

(1) The county's rank in a ranking of counties by average rate of unemployment from lowest to highest, for the most recent 12 months for which data are available.

(2) The county's rank in a ranking of counties by median household income from highest to lowest, for the most recent 12 months for which data are available.

(3) The county's rank in a ranking of counties by percentage growth in population from highest to lowest, for the most recent 36 months for which data are available.

(4) The county's rank in a ranking of counties by adjusted assessed property value per capita as published by the Department of Public Instruction, from highest to lowest, for the most recent taxable year.

(c) Annual Ranking. – After computing the development factor as provided in this section and making the adjustments required in this section, the Secretary of Commerce shall rank all the counties within the State according to their development factor from highest to lowest. The Secretary shall then identify all the areas of the State by development tier and publish this information. A development tier designation is effective only for the calendar year following the designation.

(d) Data. – In measuring rates of unemployment and median household income, the Secretary shall use the latest available data published by a State or federal agency generally recognized as having expertise concerning the data. In measuring assessed property value, the Secretary shall use the tax records prepared in each county. In measuring population and population growth, the Secretary shall use the most recent estimates of population certified by the State Budget Officer. For the purposes of this section, population statistics do not include people incarcerated in federal or State prisons.

(e) Adjustment for Certain Small Counties. – Regardless of the actual development factor, any county that has a population of less than 12,000 shall automatically be ranked one of the 40 highest counties, and any county that has a population of less than 50,000 shall automatically be ranked one of the 80 highest counties.

(f) Adjustment for Development Tier One Areas. – Regardless of the actual development factor, a county designated as a development tier one area shall automatically be ranked one of the 40 highest counties until it has been a development tier one area for at least two consecutive years.

(g) Exception for Two-County Industrial Park. – An eligible two-county industrial park has the lower development tier designation of the designations of the two counties in which it is located if it meets all of the following conditions:

(1) It is located in two contiguous counties, one of which has a lower development tier designation than the other.

(2) At least one-third of the park is located in the county with the lower tier designation.

(3) It is owned by the two counties or a joint agency of the counties.

(4) The county with the lower tier designation contributed at least the lesser of one-half of the cost of developing the park or a proportion of the cost of developing the park equal to the proportion of land in the park located in the county with the lower tier designation.

(h) Exception for Certain Multijurisdictional Industrial Parks. – An eligible industrial park created by interlocal agreement under G.S. 158-7.4 has the lowest development tier designation of the designations of the counties in which it is located if all of the following conditions are satisfied:

(1) The industrial park is located, at one or more sites, in three or more contiguous counties.

(2) At least one of the counties in which the industrial park is located is a development tier one area.

(3) The industrial park is owned by three or more units of local government or a nonprofit corporation owned or controlled by three or more units of local government.

(4) In each county in which the industrial park is located, the park has at least 250 developable acres. For the purposes of this subdivision, 'developable acres' includes acreage that is owned directly by the industrial park or its owners or that is the subject of a development agreement between the industrial park or its owners and a third-party owner.

(5) The total population of all of the counties in which the industrial park is located is less than 200,000.

(6) In each county in which the industrial park is located, at least sixteen and eight-tenths percent (16.8%) of the population was Medicaid eligible for the 2003-2004 fiscal year based on 2003 population estimates.

"**§ 143B-437.09. Urban progress zone designation.**

(a) Urban Progress Zone Defined. – An urban progress zone is an area comprised of either an economic development and training district as defined by G.S. 153A-317.12 or one or more contiguous census tracts, census block groups, or both, or parts thereof, in the most recent federal decennial census that meets all conditions in this subsection.

(1) All land within the zone is located in whole within the primary corporate limits of a municipality with a population of more than 10,000 according to the most recent annual population estimates certified by the State Budget Officer.

(2) Every census tract and census block group that composes part of the zone meets at least one of the following conditions:

a. More than twenty percent (20%) of its population is below the poverty level according to the most recent federal decennial census.

b. At least fifty percent (50%) of its area is zoned as nonresidential and it is adjacent to a census tract or block group of which at least twenty percent (20%) of the population is below the poverty level.

(3) The area of the zone zoned as nonresidential does not exceed thirty-five percent (35%) of the total area of the zone.

(b) Limitations. – No census tract or block group may be located in more than one urban progress zone. The total area of all zones within a municipality may not exceed fifteen percent (15%) of the total area of the municipality unless the smallest possible area in the municipality satisfying all of the conditions of subsection (a) of this section exceeds fifteen percent of the total area of the municipality. In the case of a municipality where the smallest possible area in the municipality satisfying all of the conditions of subsection (a) of this section exceeds fifteen percent of the total area of the municipality, the smallest possible area in the municipality satisfying all of the conditions of subsection (a) of this section may be designated as an urban poverty zone.

(c) Designation. – Upon application of a local government, the Secretary of Commerce shall make a written determination whether an area is an urban progress zone that satisfies the conditions and limitations of subsections (a) and (b) of this section. The application shall include all of the information listed in this subsection. A determination under this section is effective until December 31 of the year following the year in which the determination is made. The Department of Commerce shall publish annually a list of all urban progress zones with a description of their boundaries.

(1) A map showing the census tracts and block groups that would comprise the zone.

(2) A detailed description of the boundaries of the area that would comprise the zone.

(3) A zoning map for the municipality with the proposed zone clearly delineated upon it.

(4) A certification regarding the size of the proposed zone and the areas within the proposed zone zoned as nonresidential.

(5) Detailed census information on the municipality and the proposed zone.

(6) A resolution of the governing body of the municipality requesting the designation of the area as an urban progress zone.

(7) Any other material required by the Secretary of Commerce.

(d) Parcel of Property Partially in Urban Progress Zone. – For the purposes of this section, a parcel of property that is located partially within an urban progress zone is considered entirely within the zone if all of the following conditions are satisfied:

(1) At least fifty percent (50%) of the parcel is located within the zone.

(2) The parcel was in existence and under common ownership prior to the most recent federal decennial census.

(3) The parcel is a portion of land made up of one or more tracts or tax parcels of land that is surrounded by a continuous perimeter boundary."

SECTION 1.3. G.S. 105-129.2A reads as rewritten:

"**§ 105-129.2A. Sunset; studies.**

(a) Sunset. – This Article is repealed effective for business activities that occur on or after January 1, ~~2008.~~2007.

(a1) Sunset for Interstate Air Couriers. – Notwithstanding subsection (a) of this section, in the case of an interstate air courier that enters into a real estate lease on or before January 1, 2006, with an airport authority that provides for the lease of at least 100 acres of real property with a lease term in excess of 15 years, this Article is repealed effective for business activities that occur on or after January 1, 2010.

(a2) Sunset for Eligible Major Industries. – Notwithstanding subsection (a) of this section, in the case of a taxpayer that qualifies as an eligible major industry on or before January 1, 2006, this Article is repealed effective for business activities that occur on or after January 1, 2010.

(a3) Sunset for Certain Taxpayers Located in Development Zones. – Notwithstanding subsection (a) of this section, in the case of a taxpayer that satisfies all of the conditions of this subsection, this Article is repealed effective for business activities that occur on or after January 1, 2010.

(1) Before January 1, 2006, the taxpayer signs a letter of commitment with the Department of Commerce describing a proposed new or expanding project and specifying the amount to be invested in real property and machinery and equipment, the number of new jobs to be created, and a proposed timetable for making the investment and creating the jobs.

(2) Before January 1, 2006, the Secretary of Commerce makes a written determination that the taxpayer is expected to purchase, lease, or construct and place in service in an eligible business at a location within a development zone within a three-year period at least ten million dollars ($10,000,000) of real property and machinery and equipment and that the taxpayer will create at least 300 new jobs at the location within a three-year period beginning when the property is first placed in service in an eligible business.

(3) Before January 1, 2006, the taxpayer places at least four million dollars ($4,000,000) of real property and machinery and equipment in service at the location and creates at least 20 new jobs at the location.

(a4) Sunset for Taxpayers That Sign a Letter of Commitment. – Notwithstanding subsection (a) of this section, in the case of a taxpayer that signs a letter of commitment with the Department of Commerce on or before December 31, 2006, stating the taxpayer's intent to create new jobs or make new investments with respect to machinery equipment, central office or aircraft facility property, or substantial investments in other real property at a specific site in this State, this Article is repealed effective for business activities that occur on or after January 1, 2008.

(b) Equity Study. – The Department of Commerce shall study the effect of the tax incentives provided in this Article on tax equity. This study shall include the following:

(1) Reexamining the formula in G.S. 105-129.3(b) used to define enterprise tiers, to include consideration of alternative measures for more equitable treatment of counties in similar economic circumstances.

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

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

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

(1) Study of the distribution of tax incentives across new and expanding industries.

(2) Examination of data on economic recruitment for the period from 1994 through the most recent year for which data are available by county, by industry type, by size of investment, and by number of jobs, and other relevant information to determine the pattern of business locations and expansions before and after the enactment of the William S. Lee Act incentives.

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

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

(d) Report. – The Department of Commerce shall report the results of these studies and its recommendations to the General Assembly biennially with the first report due by April 1, 2001."

SECTION 1.4. G.S. 105-129.3A(a) reads as rewritten:

"(a) Development Zone Defined. – A development zone is an area comprised of either an economic development and training district as defined by G.S. 153A-317.12 or one or more contiguous census tracts, census block groups, or both in the most recent federal decennial census that meets all of the following conditions:

(1) Every census tract and census block group in the zone is located in whole or in part within the primary corporate limits of a city with a population of more than 5,000 according to the most recent annual population estimates certified by the State Budget Officer.

(2) It has a population of 1,000 or more according to the most recent annual population estimates certified by the State Budget Officer.

(3) More than twenty percent (20%) of its population is below the poverty level according to the most recent federal decennial census.

(4) Every census tract and census block group in the zone meets at least one of the following conditions:

a. More than ten percent (10%) of its population is below the poverty level according to the most recent federal decennial census.

b. It is immediately adjacent to another census tract or census block group that is in the same zone and has more than twenty percent (20%) of its population below the poverty level according to the most recent federal decennial census.

(5) None of the census tracts or census block groups in the zone is located in another development zone designated by the Secretary of Commerce."

SECTION 1.5. There is appropriated from the General Fund to the Department of Revenue the sum of one hundred twenty thousand dollars ($120,000) for the 2006-2007 fiscal year to perform functions related to the administration of Article 3H of Chapter 105 of the General Statutes. There is appropriated from the General Fund to the Department of Commerce the sum of forty thousand dollars ($40,000) for the 2006-2007 fiscal year to perform functions related to the administration of Article 3H of Chapter 105 of the General Statutes.

SECTION 1.6. Section 1.1 of this part is effective for taxable years beginning on or after January 1, 2007. Section 1.4 of this part is effective for taxable years beginning on or after January 1, 2004. The remainder of this part is effective when it becomes law.

PART II. CONFORMING CHANGES

SECTION 2.1. G.S. 105-129.55(a) reads as rewritten:

"(a) Qualified North Carolina Research Expenses. – A taxpayer that has qualified North Carolina research expenses for the taxable year is allowed a credit equal to a percentage of the expenses, determined as provided in this subsection. Only one credit is allowed under this subsection with respect to the same expenses. If more than one subdivision of this subsection applies to the same expenses, then the credit is equal to the higher percentage, not both percentages combined. If part of the taxpayer's qualified North Carolina research expenses qualifies under subdivision (2) of this subsection and the remainder qualifies under subdivision (3) of this subsection, the applicable percentages apply separately to each part of the expenses.

(1) Small business. – If the taxpayer was a small business as of the last day of the taxable year, the applicable percentage is three percent (3%).

(2) Low-tier research. – For expenses with respect to research performed in ~~an enterprise tier one, two, or three~~a development tier one area, the applicable percentage is three percent (3%).

(3) Other research. – For expenses not covered under subdivision (1) or (2) of this subsection, the percentages provided in the table below apply to the taxpayer's qualified North Carolina research expenses during the taxable year at the following levels:

Expenses Over	Up To	Rate
-0-	$50 million	1%
$50 million	$200 million	2%
$200 million	–	3%"

SECTION 2.2. G.S. 105-164.14(h) reads as rewritten:

"(h) Low Enterprise or Development Tier Machinery. – Eligible taxpayers are allowed an annual refund of sales and use taxes paid under this Article as provided in this subsection.

(1) Refunds. – An eligible person is allowed an annual refund of sales and use taxes paid by it under this Article at the general rate of tax on eligible machinery and equipment it purchases for use in an enterprise tier one area or an enterprise tier two area, as defined in G.S. ~~105-129.3.~~105-129.3 or a development tier one area, as defined in G.S. 143B-437.08. Liability incurred indirectly by the taxpayer for sales and use taxes on these items is considered tax paid by the taxpayer. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the State's fiscal year. Refunds applied for after the due date are barred.

(2) Eligibility. – A person is eligible for the refund provided in this subsection if it is engaged primarily in one of the businesses listed in G.S. 105-129.4(a) in an enterprise tier one area or an enterprise tier two area, as defined in G.S. ~~105-129.3.~~105-129.3 or if it is engaged primarily in one of the businesses listed in G.S. 105-129.73(a) in a development tier one area, as defined in G.S. 143B-437.08.

(3) Machinery and equipment. – For the purpose of this subsection, the term 'machinery and equipment' means engines, machinery, equipment, tools, and implements used or designed to be used in one of the businesses listed in G.S. ~~105-129.4(a).~~105-129.4(a) or 105-129.73(a). Machinery and equipment are eligible for the refund provided in this subsection if the taxpayer places them in service in an enterprise tier one area or an enterprise tier two area, as defined in G.S. ~~105-129.3,~~105-129.3, or a development tier one area, as defined in G.S. 143B-437.08, capitalizes them for tax purposes under the Code, and does not lease them to another party."

SECTION 2.3. G.S. 105-164.14(j)(2) reads as rewritten:

"(j) Certain Industrial Facilities. – The owner of an eligible facility is allowed an annual refund of sales and use taxes as provided in this subsection.

...

(2) Eligibility. – A facility is eligible under this subsection if it meets both of the following conditions:

a. It is primarily engaged in one of the industries listed in this subsection.

b. The Secretary of Commerce has certified that the owner of the facility will invest at least the required amount of private funds to construct the facility in this State. For the purpose of this subsection, costs of construction may include costs of acquiring and improving land for the facility and costs of equipment for

the facility. If the facility is located in ~~an enterprise tier one, two, or three~~development tier one area as defined in ~~G.S. 105-129.3~~G.S. 143B-437.08 the required amount is fifty million dollars ($50,000,000). For all other facilities, the required amount is one hundred million dollars ($100,000,000). In the case of a computer manufacturing facility, the owner may invest these funds either directly or indirectly through a related entity or strategic partner as those terms are defined in G.S. 105-129.61. In the case of a computer manufacturing facility, the term 'facility' has the same meaning as under G.S. 105-129.61."

SECTION 2.4. G.S. 143B-437.01 reads as rewritten:

"**§ 143B-437.01. Industrial Development Fund.**

(a) Creation and Purpose of Fund. – There is created in the Department of Commerce the Industrial Development Fund to provide funds to assist the local government units of the most economically distressed counties in the State in creating jobs in certain industries. The Department of Commerce shall adopt rules providing for the administration of the program. Those rules shall include the following provisions, which shall apply to each grant from the fund:

(1) The funds shall be used for (i) installation of or purchases of equipment for eligible industries, (ii) structural repairs, improvements, or renovations of existing buildings to be used for expansion of eligible industries, or (iii) construction of or improvements to new or existing water, sewer, gas, telecommunications, high-speed broadband, electrical utility distribution lines or equipment, or transportation infrastructure for existing or new or proposed industrial buildings to be used for eligible industries. To be eligible for funding, the water, sewer, gas, telecommunications, high-speed broadband, electrical utility lines or facilities, or transportation infrastructure shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific eligible industrial activity.

(1a) The funds shall be used for projects located in economically distressed counties except that the Secretary of Commerce may use up to one hundred thousand dollars ($100,000) to provide emergency economic development assistance in any county that is documented to be experiencing a major economic dislocation.

(2) The funds shall be used by the city and county governments for projects that will directly result in the creation of new jobs. The funds shall be expended at a maximum rate of five thousand dollars ($5,000) per new job created up to a maximum of five hundred thousand dollars ($500,000) per project.

(3) There shall be no local match requirement if the project is located in ~~an enterprise tier one area as defined in G.S. 105-129.3~~.a county that has

one of the 25 highest rankings under G.S. 143B-437.08 after the adjustments of that section are applied.

(4) The Department may authorize a local government that receives funds under this section to use up to two percent (2%) of the funds, if necessary, to verify that the funds are used only in accordance with law and to otherwise administer the grant or loan.

(5) No project subject to the Environmental Policy Act, Article 1 of Chapter 113A of the General Statutes, shall be funded unless the Secretary of Commerce finds that the proposed project will not have a significant adverse effect on the environment. The Secretary of Commerce shall not make this finding unless the Secretary has first received a certification from the Department of Environment and Natural Resources that concludes, after consideration of avoidance and mitigation measures, that the proposed project will not have a significant adverse effect on the environment.

(6) The funds shall not be used for any nonmanufacturing project that does not meet the wage standard set out in G.S. 105-129.4(b).

(a1) Definitions. – The following definitions apply in this section:

(1) Air courier services. – ~~A person is engaged in the air courier services business if the person's primary business is furnishing air delivery of individually addressed letters and packages, except by the United States Postal Service.~~Defined in G.S. 105-129.71.

~~(2) Central administrative office. – Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.~~

(2a) Company headquarters. – Defined in G.S. 105-129.71.

~~(3) Data processing. – Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.~~

(4) Economically distressed county. – A county that has one of the 65 highest rankings under G.S. 143B-437.08 after the adjustments of that section are applied.~~designated as an enterprise tier one, two, or three area pursuant to G.S. 105-129.3.~~

(5) Eligible industry. – A ~~central administrative office~~company headquarters or a person engaged in the business of air courier services, ~~data processing,~~information technology and services, manufacturing, or warehousing and wholesale trade.

(6) Information technology and services. – Defined in G.S. 105-129.71.

(7) Major economic dislocation. – The actual or imminent loss of 500 or more manufacturing jobs in the county or of a number of manufacturing jobs equal to at least ten percent (10%) of the existing manufacturing workforce in the county.

(8) Manufacturing. – Defined in ~~the North American Industry Classification System adopted by the United States Office of Budget and Management.~~G.S. 105-129.71.

(9) Reserved.

(10) ~~Warehousing and wholesale trade. Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.~~Warehousing. – Defined in G.S. 105-129.71.

(11) Wholesale trade. – Defined in G.S. 105-129.71.

(b) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.5.

(b1) Utility Account. – There is created within the Industrial Development Fund a special account to be known as the Utility Account to provide funds to assist the local government units of ~~enterprise tier one, two, and three areas, as defined in G.S. 105-129.3,~~the counties that have one of the 65 highest rankings under G.S. 143B-437.08 after the adjustments of that section are applied. in creating jobs in eligible industries. The Department of Commerce shall adopt rules providing for the administration of the program. Except as otherwise provided in this subsection, those rules shall be consistent with the rules adopted with respect to the Industrial Development Fund. The rules shall provide that the funds in the Utility Account may be used only for construction of or improvements to new or existing water, sewer, gas, telecommunications, high-speed broadband, electrical utility distribution lines or equipment, or transportation infrastructure for existing or new or proposed industrial buildings to be used for eligible industrial operations. To be eligible for funding, the water, sewer, gas, telecommunications, high-speed broadband, electrical utility lines or facilities, or transportation infrastructure shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific industrial activity. There shall be no maximum funding amount per new job to be created or per project.

(c) Reports. – The Department of Commerce shall report annually to the General Assembly concerning the applications made to the fund and the payments made from the fund and the impact of the payments on job creation in the State. The Department of Commerce shall also report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the use of the moneys in the fund, including information regarding to whom payments were made, in what amounts, and for what purposes.

(c1) In addition to the reporting requirements of subsection (c) of this section, the Department of Commerce shall report annually to the General Assembly concerning the payments made from the Utility Account and the impact of the payments on job creation in the State. The Department of Commerce shall also report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the use of the moneys in the Utility Account including information regarding to whom payments were made, in what amounts, and for what purposes.

(d) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.5."

SECTION 2.5. G.S. 143B-437.04 reads as rewritten:

"**§ 143B-437.04. Community development block grants.**

(a) The Department of Commerce shall adopt guidelines for the awarding of Community Development Block Grants to ensure that:

(1) No local match is required for grants awarded for projects located in ~~enterprise tier one areas as defined in G.S. 105-129.3.~~counties that have one of the 25 highest rankings under G.S. 143B-437.08 after the adjustments of that section are applied.

(2) To the extent practicable, priority consideration for grants is given to projects located ~~in enterprise tier one areas as defined in G.S. 105-129.3~~counties that have one of the 25 highest rankings under G.S. 143B-437.08 after the adjustments of that section are applied or in ~~development~~ urban progress zones that have met the conditions of subsection (b) of this section.

(b) In order to qualify for the benefits of this section, after an area is designated ~~a development~~an urban progress zone under G.S. ~~105-129.3A,~~143B-437.09 the governing body of the city in which the zone is located must adopt a strategy to improve the zone and establish ~~a development~~an urban progress zone committee to oversee the strategy. The strategy and the committee must conform with requirements established by the Secretary of Commerce."

SECTION 2.6. G.S. 143B-437.51(5a) is recodified as G.S. 143B-437.51(4a) and reads as rewritten:

"(4a) ~~Enterprise~~ Development tier. – The classification assigned to an area pursuant to G.S. ~~105-129.3.~~143B-437.08."

SECTION 2.7. G.S. 143B-437.53(a) reads as rewritten:

"(a) Minimum Number of Eligible Positions. – A business may apply to the Committee for a grant for any project that creates the minimum number of eligible positions as set out in the table below. If the project will be located in more than one ~~enterprise~~ development tier area, the location with the highest ~~enterprise~~ development tier area designation determines the minimum number of eligible positions that must be created.

~~Enterprise~~ Development Tier Area	Number of Eligible Positions
Tier One	10
Tier Two	~~10~~20
Tier Three	~~10~~20
~~Tier Four~~	~~20~~
~~Tier Five~~	~~20~~"

SECTION 2.8. G.S. 143B-437.55(c)(3) reads as rewritten:

"(c) Annual Reports. – The Committee shall publish a report on the Job Development Investment Grant Program on or before April 30 of each year. The report shall include the following:

...

(3) The number and ~~enterprise~~ development tier area of eligible positions created by projects with respect to which grants were awarded."

SECTION 2.9. G.S. 143B-437.56(d) reads as rewritten:

"(d) The percentage established in the agreement shall be reduced by ~~one-fourth~~fifteen percent (15%) for any eligible position that is located in a development tier two area and twenty-five percent (25%) for any eligible position that is located in ~~an enterprise~~ a development tier ~~four or five~~three area."

SECTION 2.10. G.S. 158-7.3(a) reads as rewritten:

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

(1) Development project. – A capital project that includes capital expenditures by both private persons and one or more units of local government and that increases net employment opportunities for residents of the development district or within a two-mile radius of the project, whichever is larger, and increases the local government tax base.

If the district in which such a project will occur is outside a city's central business district (as that district is defined by resolution of the city council, which definition is binding and conclusive), then, of the private development forecast for a development project by the development financing plan for the district in which the project will occur, a maximum of twenty percent (20%) of the plan's estimated square footage of floor space may be proposed for use in retail sales, hotels, banking, and financial services offered directly to consumers, and other commercial uses other than office space. The twenty percent (20%) limitation in the preceding sentence does not apply to development financing districts located in ~~an enterprise~~ a development tier one area, as defined in G.S. ~~105-129.3~~,143B-437.08 and created primarily for tourism-related economic development, such as developments featuring facilities for exhibitions, athletic and cultural events, show and public gatherings, racing facilities, parks and recreation facilities, art galleries, museums, and art centers.

(2) Publish. – Insertion in a newspaper qualified under G.S. 1-597 to publish legal advertisements in the county or counties in which the unit is located.

(3) Unit or unit of local government. – A county, city, town, or incorporated village."

SECTION 2.11. G.S. 19A-64(c) reads as rewritten:

"(c) Distribution. – The Department shall make payments from the Spay/Neuter Account to eligible counties and cities who have made timely application for reimbursement within 30 days of the closing date for receipt of applications for that quarter. In the event that total requests for reimbursement exceed the amounts available in the Spay/Neuter Account for distribution, the monies available will be distributed as follows:

(1) Fifty percent (50%) of the monies available in the Spay/Neuter Account shall be reserved for reimbursement for eligible applicants within ~~enterprise tier one, two, and three~~development tier one areas as defined in G.S. ~~105-129.3.~~143B-437.08. The remaining fifty percent

(50%) of the funds shall be used to fund reimbursement requests from eligible applicants in ~~enterprise tier four and five~~development tier two and three areas as defined in G.S. ~~105-129.3.~~143B-437.08.

(2) Among the eligible counties and cities in ~~enterprise tier one, two, and three~~development tier one areas, reimbursement shall be made to each eligible county or city in proportion to the number of dogs and cats that have received rabies vaccinations during the preceding fiscal year in that county or city as compared to the number of dogs and cats that have received rabies vaccinations during the preceding fiscal year by all of the eligible applicants in ~~enterprise tier one, two, or three~~development tier one areas.

(3) Among the eligible counties and cities in ~~enterprise tier four and five~~development tier two and three areas, reimbursement shall be made to each eligible county or city in proportion to the number of dogs and cats that have received rabies vaccinations during the preceding fiscal year in that county or city as compared to the number of dogs and cats that have received rabies vaccinations during the preceding fiscal year by all of the eligible applicants in ~~enterprise tier four and five~~development tier two and three areas.

(4) Should funds remain available from the fifty percent (50%) of the Spay/Neuter Account designated for ~~enterprise tier one, two, or three~~development tier one areas after reimbursement of all claims by eligible applicants in those areas, the remaining funds shall be made available to reimburse eligible applicants in ~~enterprise tier four and five~~development tier two and three areas."

SECTION 2.12. G.S. 106-744(c2) reads as rewritten:

"(c2) A county that is ~~an enterprise tier four county or an enterprise tier five~~a development tier two or three county, as these tiers are defined in ~~G.S. 105-129.3(a),~~G.S. 143B-437.08, and that has prepared a countywide farmland protection plan shall match fifteen percent (15%) of the Trust Fund monies it receives with county funds. A county that has not prepared a countywide farmland protection plan shall match thirty percent (30%) of the Trust Fund monies it receives with county funds. A county that is ~~an enterprise tier one county, an enterprise tier two county, or an enterprise tier three county, as these counties are~~a development tier one county, as defined in ~~G.S. 105-129.3(a),~~G.S. 143B-437.08, and that has prepared a countywide farmland protection plan shall not be required to match any of the Trust Fund monies it receives with county funds."

SECTION 2.13. G.S. 113A-252 reads as rewritten:

"**§ 113A-252. Definitions.**

The following definitions apply in this Article:

(1) Council. – The advisory council for the Clean Water Management Trust Fund.

(2) Economically distressed local government unit. – An economically distressed county, as defined in ~~G.S. 105-129.3~~,G.S. 143B-437.01, or a local government unit located in that county.
(3) Fund. – The Clean Water Management Trust Fund created pursuant to this Article.
(4) Land. – Real property and any interest in, easement in, or restriction on real property.
(4a) Local government unit. – Defined in G.S. 159G-20.
(4b) Stormwater quality project. – Defined in G.S. 159G-20.
(5) Trustees. – The trustees of the Clean Water Management Trust Fund.
(6) Wastewater collection system. – Defined in G.S. 159G-20.
(7) Wastewater treatment works. – Defined in G.S. 159G-20."

SECTION 2.14. G.S. 146-22.3(d) reads as rewritten:

"(d) Application. – This section applies only to land acquired in counties designated as ~~an enterprise tier one or enterprise tier two~~a development tier one area under G.S. ~~105-129.3.~~143B-437.08."

SECTION 2.15. G.S. 146-22.4(c) reads as rewritten:

"(c) Application. – This section applies only to land acquired in counties designated as ~~an enterprise tier one or enterprise tier two~~a development tier one area under G.S. ~~105-129.3.~~143B-437.08."

SECTION 2.16. G.S. 146-22.5(b) reads as rewritten:

"(b) Application. – This section applies only to land acquired in counties designated as ~~an enterprise tier one or enterprise tier two~~a development tier one area under G.S. ~~105-129.3.~~143B-437.08."

SECTION 2.17. G.S. 153A-15.1(e) reads as rewritten:

"(e) Application. – This section applies only to land acquired in counties designated as ~~an enterprise tier one or enterprise tier two~~a development tier one area under G.S. ~~105-129.3.~~143B-437.08."

SECTION 2.18. G.S. 160A-425.1(c) reads as rewritten:

"(c) If an inspector declares a residential building or nonresidential building or structure to be unsafe under subsection (b) of this section, the inspector must affix a notice of the unsafe character of the structure to a conspicuous place on the exterior wall of the building. For the purposes of this section, the term "community development target area" means an area that has characteristics of ~~a development zone under G.S. 105-129.3A,~~an urban progress zone under G.S. 143B-437.09, a 'nonresidential redevelopment area' under G.S. 160A-503(10), or an area with similar characteristics designated by the city council as being in special need of revitalization for the benefit and welfare of its citizens."

SECTION 2.19. G.S. 160A-426(c) reads as rewritten:

"(c) If an inspector declares a nonresidential building or structure to be unsafe under subsection (b) of this section, the inspector must affix a notice of the unsafe character of the structure to a conspicuous place on the exterior wall of the building. For the purposes of this section, the term "community development target area" means an area that has characteristics of ~~a development zone under G.S. 105-129.3A,~~an urban

progress zone under G.S. 143B-437.09, a 'nonresidential redevelopment area' under G.S. 160A-503(10), or an area with similar characteristics designated by the city council as being in special need of revitalization for the benefit and welfare of its citizens."

SECTION 2.20. G.S. 105-129.51(a) reads as rewritten:

"(a) A taxpayer is eligible for the credit allowed in this Article if it satisfies the requirements of G.S. ~~105-129.4(b), (b2), (b3), and (b4)~~105-129.73(c), (d), (e), and (f) relating to wage standard, health insurance, environmental impact, and safety and health programs, respectively."

SECTION 2.21. G.S. 105-259(b) reads as rewritten:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

...

(24) To furnish the Department of Commerce and the Employment Security Commission a copy of the qualifying information required in G.S. ~~105-129.7(b).~~105-129.7(b) or 105-129.76(b).

...

(27) To publish the information required under G.S. 105-129.6, 105-129.19, 105-129.26, 105-129.38, 105-129.44, 105-129.65A, 105-129.75, 105-130.41, 105-130.45, 105-151.22, and 105-164.14.

...

(36) To furnish the Department of Commerce with the information needed to complete the studies required under G.S. 105-129.2A and G.S. 105-129.72."

SECTION 2.22. This part becomes effective January 1, 2007.

PART III. EFFECTIVE DATES.

SECTION 3.1. Except as otherwise provided, this act is effective when it becomes law.

HOUSE BILL 2170

Short Title:	Bill Lee Changes.	(Public)
Sponsors:	Representatives Harrell, Daughtridge, Gibson, Owens (Primary Sponsors); England, Goforth, Jones, Parmon, Ray, Spear, Underhill, and Wray.	
Referred to:	Finance.	

May 18, 2006

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.

The General Assembly of North Carolina enacts:

PART I. REPLACEMENT OF BILL LEE ACT

SECTION 1.1. 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.

(3) The economic condition of the State is not static and recent changes in the State's economic condition have created economic distress that requires a reevaluation of certain existing State programs and the enactment of a new program as provided in this Article that is designed to stimulate new economic activity and to create new jobs within the State.

(4) The enactment of this Article is necessary to stimulate the economy and create new jobs in North Carolina; and this Article will promote the general welfare and confer, as its primary purpose and effect, benefits on citizens throughout the State through the creation of new jobs, an enlargement of the overall tax base, an expansion and diversification of the State's industrial base, and an increase in revenue to the State and its political subdivisions.

(5) The purpose of this Article is to stimulate economic activity and to create new jobs within the State.

(6) The State is in need of a focused tax credit program that encourages and facilitates economic growth and development within the State.

(7) The resources of the State are not evenly distributed throughout the State and different communities have different abilities and needs in attracting and maintaining new and expanding business and industry.

"**§ 105-129.71. Definitions.**

The following definitions apply in this Article:

(1) Aircraft maintenance and repair. – The provision of specialized maintenance or repair services for commercial aircraft or the rebuilding of commercial aircraft.

(2) Air courier services. – The furnishing of air delivery of individually addressed letters and packages for compensation, in interstate commerce, except by the United States Postal Service.

(3) Business property. – Tangible personal property that is used in a business and capitalized under the Code.

(4) Company headquarters. – A corporate, subsidiary, or regional managing office, as defined by NAICS in United States industry 551114, that is responsible for strategic or organizational planning and decision making for the business on an international, national, or multistate regional basis.

(5) Cost. – In the case of property owned by the taxpayer, cost is determined pursuant to regulations adopted under section 1012 of the Code. In the case of property the taxpayer leases from another, cost is value as determined pursuant to G.S. 105-130.4(j)(2).

(6) Customer service call center. – The provision of support service by a business to its customers by telephone or other electronic means to support products or services of the business. For the purposes of this definition, an establishment is primarily engaged in providing support services by telephone or other electronic means only if at least sixty

percent (60%) of its calls are incoming or at least sixty percent (60%) of its other electronic communications are initiated by its customers.

(7) Development tier. – The classification assigned to an area pursuant to G.S. 143B-437.08.

(8) Electronic shopping and mail order houses. – An industry in electronic shopping and mail order houses industry group 4541 as defined by NAICS.

(9) Establishment. – Defined in 29 C.F.R § 1904.46, as it existed on January 1, 2002.

(10) Full-time job. – A position that requires at least 1,600 hours of work per year and is intended to be held by one employee during the entire year. A full-time employee is an employee who holds a full-time job.

(11) Hub. – Defined in G.S. 105-164.3.

(12) Information technology and services. – An industry in one of the following:

a. Internet service providers, Web search portals, and data processing subsector 518 as defined by NAICS.

b. Software publishers industry group 5112 as defined by NAICS.

c. Computer systems design and related services industry group 5415 as defined by NAICS.

(13) Reserved.

(14) Manufacturing. – An industry in manufacturing sectors 31 through 33, as defined by NAICS, but not including quick printing or retail bakeries.

(15) Motorsports facility. – A motorsports racetrack classified in the United States racetrack national industry 711212, as defined by NAICS.

(16) Motorsports racing team. – A professional racing team primarily engaged in the research and development, design, manufacture, repair, maintenance, and operation of motor vehicles used in live motorsports racing events before a paying audience.

(17) NAICS. – The North American Industry Classification System adopted by the United States Office of Management and Budget as of December 31, 2002.

(18) New job. – A full-time job that represents a net increase in the number of the taxpayer's employees statewide. A new employee is an employee who holds a new job. The term does not include a job currently located in this State that is transferred to the business from a related member of the business.

(19) Overdue tax debt. – Defined in G.S. 105-243.1.

(20) Purchase. – Defined in section 179 of the Code.

(21) Related entity. – Defined in G.S. 105-130.7A.

(22) Research and development. – An industry in scientific research and development services industry group 5417 as defined by NAICS.

(23) Urban progress zone. – The classification assigned to an area pursuant to G.S. 143B-437.09.

(24) Warehousing. – An industry in warehousing and storage subsector 493 as defined by NAICS.

(25) Wholesale trade. – An industry in wholesale trade sector 42 as defined by NAICS.

"**§ 105-129.72. Sunset; studies.**

(a) Sunset. – This Article is repealed effective for business activities that occur on or after January 1, 2011.

(b) Equity Study. – The Department of Commerce shall study the effect of the tax incentives provided in this Article on tax equity. This study shall include the following:

(1) Reexamining the formula in G.S. 143B-437.08 used to define development tiers, to include consideration of alternative measures for more equitable treatment of counties in similar economic circumstances.

(2) Considering whether the assignment of tiers and the applicable thresholds are equitable for smaller counties.

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

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

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

(2) Examining data on economic recruitment for the period from 2005 through the most recent year for which data are available by county, by industry type, by size of investment, and by number of jobs, and other relevant information to determine the pattern of business locations and expansions before and after the enactment of this Article.

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

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

(d) Report. – The Department of Commerce shall report the results of these studies and its recommendations to the General Assembly biennially with the first report due by June 1, 2009.

"**§ 105-129.73. Eligibility; forfeiture.**

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

(1) Aircraft maintenance and repair.

(2) Air courier services hub.

(3) Company headquarters, but only if the additional eligibility requirements of subsection (b) of this section are satisfied.
(4) Customer service call centers.
(5) Electronic shopping and mail order houses.
(6) Information technology and services.
(7) Manufacturing.
(8) Motorsports facility.
(9) Motorsports racing team.
(10) Research and development.
(11) Warehousing.
(12) Wholesale trade.

(b) Company Headquarters Eligibility. – A taxpayer is eligible for a credit under this Article with respect to a company headquarters only if the taxpayer creates at least 75 new jobs at the company headquarters within a 12-month period. A taxpayer that meets this job creation requirement is eligible for credits under this Article with respect to the company headquarters for three taxable years beginning with the year in which the job creation requirement is satisfied. A taxpayer that creates an additional 75 new jobs at the company headquarters in a 12-month period during a three-year eligibility period does not qualify for any extended eligibility period. However, a taxpayer that creates an additional 75 new jobs at the company headquarters in a 12-month period after the completion of a three-year eligibility period is eligible for credits with respect to the company headquarters for an additional three taxable years beginning in the year in which the additional job creation requirement is satisfied.

(c) Wage Standard. – A taxpayer is eligible for a credit under this Article in a development tier two or three area only if the taxpayer satisfies a wage standard. The taxpayer is not required to satisfy a wage standard if the activity occurs in a development tier one area. Jobs that are located within an urban progress zone satisfy the wage if they pay an average weekly wage that is at least equal to ninety-five percent (95%) of the lesser of the average wage for all insured private employers in the State and the average wage for all insured private employers in the county. All other jobs satisfy the wage standard if they pay an average weekly wage that is at least equal to the lesser of one hundred ten percent (110%) of the average wage for all insured private employers in the State and ninety-five percent (95%) of the average wage for all insured private employers in the county. The Department of Commerce shall annually publish the wage standard for each county.

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

(d) Health Insurance. – A taxpayer is eligible for a credit under this Article only if the taxpayer provides health insurance for all of the full-time jobs at the establishment with respect to which the credit is claimed when the taxpayer engages in the activity

that qualifies for the credit. For the purposes of this subsection, a taxpayer provides health insurance if it pays at least fifty percent (50%) of the premiums for health care coverage that equals or exceeds the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee pursuant to G.S. 58-50-125.

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

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

(f) Safety and Health Programs. – A taxpayer is eligible for a credit allowed under this Article only if the taxpayer certifies that, as of the time the taxpayer claims the credit, at the establishment with respect to which the credit is claimed, the taxpayer has no citations under the Occupational Safety and Health Act that have become a final order within the past three years for willful serious violations or for failing to abate serious violations. For the purposes of this subsection, 'serious violation' has the same meaning as in G.S. 95-127. The Commissioner of Labor shall notify the Department of Revenue annually of all employers who have had these citations become final orders within the past three years.

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

(h) Expiration. – If, during the period that installments of a credit under this Article accrue, the taxpayer is no longer engaged in one of the types of business described in subsection (a) of this section, the credit expires. If, during the period that installments of a credit under this Article accrue, the number of jobs of an eligible business falls below the minimum number required under subsection (a) of this section, any credit associated with that business expires. When a credit expires, the taxpayer may not take any remaining installments of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to

the extent permitted under G.S. 105-129.74. A change in the development tier designation of the location of an establishment does not result in expiration of a credit under this Article.

(i) Forfeiture. – A taxpayer forfeits a credit allowed under this Article if the taxpayer was not eligible for the credit for the calendar year in which the taxpayer engaged in the activity for which the credit was claimed. In addition, a taxpayer forfeits a credit for investment in real property under G.S. 105-129.79 if the taxpayer fails to timely create the number of required new jobs or to timely make the required level of investment under G.S. 105-129.79(b). A taxpayer that forfeits a credit under this Article is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236.

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

(1) The business closed before it was acquired.

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

(3) The business was acquired by its employees directly or indirectly through an acquisition company under an employee stock option transaction or another similar mechanism. For the purpose of this subdivision, 'acquired' means that as part of the initial purchase of a business by the employees, the purchase included an agreement for the employees through the employee stock option transaction or another similar mechanism to obtain one of the following:

a. Ownership of more than fifty percent (50%) of the business.

b. Ownership of not less than forty percent (40%) of the business within seven years if the business has tangible assets with a net book value in excess of one hundred million dollars ($100,000,000) and has the majority of its operations located in a development tier one area.

(k) Advisory Ruling. – A taxpayer may request in writing from the Secretary of Revenue specific advice regarding eligibility for a credit under this Article. G.S. 105-264 governs the effect of this advice. A taxpayer may not legally rely upon

advice offered by any other State or local government official or employee acting in an official capacity regarding eligibility for a credit under this Article.

(l) Planned Expansion. – A taxpayer that signs a letter of commitment with the Department of Commerce, after the Department has calculated the development tier designations for the next year but before the beginning of that year, to undertake specific activities at a specific site within the next two years may calculate the credit for which it qualifies based on the establishment's development tier designation and urban progress zone designation in the year in which the letter of commitment was signed by the taxpayer. If the taxpayer does not engage in the activities within the two-year period, the taxpayer does not qualify for the credit; however, if the taxpayer later engages in the activities, the taxpayer qualifies for the credit based on the development tier and urban progress zone designations in effect at that time.

"**§ 105-129.74. Tax election; cap; carryforwards; limitations.**

(a) Tax Election. – The credits provided in this Article are allowed against the franchise tax levied in Article 3 of this Chapter, the income taxes levied in Article 4 of this Chapter, and the gross premiums tax levied in Article 8B of this Chapter. The taxpayer may divide a credit between the taxes against which it is allowed. Carryforwards of a credit may be divided between the taxes against which it is allowed without regard to the original election regarding the division of the credit.

(b) Cap. – The credits allowed under this Article may not exceed fifty percent (50%) of the cumulative amount of taxes against which they may be claimed for the taxable year, reduced by the sum of all other credits allowed against those taxes, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of credit, including carryforwards, claimed by the taxpayer under this Article for the taxable year.

(c) Carryforward. – Unless a longer carryforward period applies, any unused portion of a credit allowed under G.S. 105-129.77 or G.S. 105-129.78 may be carried forward for five years and any unused portion of a credit allowed under G.S. 105-129.79 may be carried forward for 15 years. If the Secretary of Commerce makes a written determination that the taxpayer is expected to purchase or lease, and place in service in connection with an eligible business within a two-year period, at least one hundred fifty million dollars ($150,000,000) worth of business and real property, any unused portion of a credit under this Article with respect to the establishment that satisfies that condition may be carried forward for the succeeding 20 years. If the taxpayer does not make the required level of investment, the taxpayer shall apply the five-year carryforward period rather than the 20-year carryforward period.

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

"**§ 105-129.75. Fees and reports.**

(a) Fee. – When filing a return for a taxable year in which the taxpayer engaged in activity for which the taxpayer is eligible for a credit under this Article, the taxpayer shall pay the Department of Revenue a fee of five hundred dollars ($500.00) for each type of credit the taxpayer claims or intends to claim with respect to an establishment.

The fee is due at the time the return is due for the taxable year in which the taxpayer engaged in the activity for which the taxpayer is eligible for a credit. No credit is allowed under this Article for a taxable year until all outstanding fees have been paid. Fees collected under this section shall be credited to the General Fund.

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

(1) The number of claims for each credit allowed in this Article.

(2) The number and development tier area of new jobs with respect to which credits were claimed.

(3) The cost and development tier area of business property with respect to which credits were claimed.

(4) The cost and development tier area of real property investment with respect to which credits were claimed.

"**§ 105-129.76. Substantiation.**

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

(b) Documentation. – Each taxpayer shall provide with the tax return qualifying information for each credit claimed under this Article. The qualifying information shall be in the form prescribed by the Secretary and shall 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 establishment.

(2) The type of business with respect to which the credit is claimed and the average weekly wage at the establishment with respect to which the credit is claimed.

(3) Any other qualifying information related to a specific credit allowed under this Article.

"**§ 105-129.77. Credit for creating jobs.**

(a) Credit. – A taxpayer that meets the eligibility requirements set out in G.S. 105-129.73 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 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. If the job is located in an urban progress zone, the amount of the credit is

increased by one thousand dollars ($1,000) per job. In addition, if a job located in an urban progress zone is filled by a resident of that zone, the amount of the credit is increased by an additional two thousand dollars ($2,000) per job.

Area Development Tier	Amount of Credit
Tier One	$12,500
Tier Two	5,000
Tier Three	1,000

(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. If the taxpayer creates new jobs in an urban progress zone, the applicable threshold is the one for a development tier one area.

Area Development Tier	Threshold
Tier One	5
Tier Two	10
Tier Three	25

(c) Calculation. – A job is located in a county or urban progress zone if more than fifty percent (50%) of the employee's duties are performed in the county or the zone. The number of new jobs a taxpayer creates during the taxable year is determined by subtracting the average number of full-time employees the taxpayer had in this State during the 12-month period preceding the beginning of the taxable year from the average number of full-time employees the taxpayer has in this State during the taxable year.

(d) Installments. – The credit may not be taken in the taxable year in which the new jobs are created. Instead, the credit shall be taken in equal installments over the four years following the taxable year in which the new jobs were created and is conditional upon the continued maintenance of those jobs by the taxpayer. If, in one of the four years in which the installment of a credit accrues, a job is no longer filled, the credit with respect to that job expires and the taxpayer may not take any remaining installment of the credit with respect to that job. If, in one of the years in which the installment of a credit accrues, the number of the taxpayer's full-time employees falls below the sum of the applicable threshold and the number of full-time employees the taxpayer had in the year before the year in which the taxpayer qualified for the credit, the credits with respect to all of the new jobs expire, and the taxpayer may not take any remaining installments of the credits. When a credit expires under this subsection, the taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.74.

(e) Transferred Jobs. – Jobs transferred from one area in the State to another area in the State are not considered new jobs for purposes of this section. Jobs that were

located in this State and that are transferred to the taxpayer from a related member of the taxpayer are not considered new jobs for purposes of this section. If, in one of the four years in which the installment of a credit accrues, the job with respect to which the credit was claimed is moved to an area in a higher-numbered development tier or out of an urban progress zone, the remaining installments of the credit are allowed only to the extent they would have been allowed if the job was initially created in the area to which it was moved. If, in one of the years in which the installment of a credit accrues, the job with respect to which the credit was claimed is moved to an area in a lower-numbered development tier or an urban progress zone, the remaining installments of the credit shall be calculated as if the job had been created initially in the area to which it was moved.

(f) Wage Standard. – For the purposes of this section, a taxpayer satisfies the wage standard requirement of G.S. 105-129.73 only if the taxpayer satisfies the requirement with respect to both the new jobs, considered collectively, for which a credit is claimed and all of the jobs at the establishment, considered collectively, with respect to which a credit is claimed.

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

"**§ 105-129.78. Credit for investing in business property.**

(a) General Credit. – A taxpayer that meets the eligibility requirements set out in G.S. 105-129.73 and that has purchased or leased business property and placed it in service in this State during the taxable year and that has satisfied the threshold requirements of subsection (c) of this section is allowed a credit equal to the applicable percentage of the excess of the eligible investment amount over the applicable threshold. If the taxpayer places business property in service in an urban progress zone, the applicable percentage is the one for a development tier one area. Business property is eligible if it is not leased to another party. The credit may not be taken for the taxable year in which the business property is placed in service but shall be taken in equal installments over the four years following the taxable year in which it is placed in service. The applicable percentage is as follows:

Area Development Tier	Applicable Percentage
Tier One	7%
Tier Two	5%
Tier Three	4%

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

(c) Threshold. – The applicable threshold is the appropriate amount set out in the following table based on the development tier where the eligible business property is placed in service during the taxable year. If the taxpayer places business property in

service in an urban progress zone, the applicable threshold is the one for a development tier one area. If the taxpayer places eligible business property in service at more than one establishment in a county during the taxable year, the threshold applies to the aggregate amount of eligible business property placed in service during the taxable year at all establishments in the county. If the taxpayer places eligible business property in service at establishments in different counties, the threshold applies separately to the aggregate amount of eligible business property placed in service in each county.

Area Development Tier	Threshold
Tier One	$ -0-
Tier Two	1,000,000
Tier Three	4,000,000

(d) Expiration. – As used in this subsection, the term 'disposed of' means disposed of, taken out of service, or moved out of State. If, in one of the four years in which the installment of a credit accrues, the business property with respect to which the credit was claimed is disposed of, the credit expires, and the taxpayer may not take any remaining installment of the credit for that business property unless the cost of that business property is offset in the same taxable year by the taxpayer's new investment in eligible business property placed in service in the same county, as provided in this subsection. If, during the taxable year, the taxpayer disposed of the business property for which installments remain, there has been a net reduction in the cost of all the taxpayer's eligible business property that are in service in the same county as the business property that was disposed of, and the amount of this reduction is greater than twenty percent (20%) of the cost of the business property that was disposed of, then the credit for the business property that was disposed of expires. If the amount of the net reduction is equal to twenty percent (20%) or less of the cost of the business property that was disposed of, or if there is no net reduction, then the credit does not expire. In determining the amount of any net reduction during the taxable year, the cost of business property the taxpayer placed in service during the taxable year and for which the taxpayer claims a credit under Article 3A or Article 3B of this Chapter may not be included in the cost of all the taxpayer's eligible business property that is in service. If in a single taxable year business property with respect to two or more credits in the same county are disposed of, the net reduction in the cost of all the taxpayer's eligible business property that is in service in the same county is compared to the total cost of all the business property for which credits expired in order to determine whether the remaining installments of the credits are forfeited.

The expiration of a credit does not prevent the taxpayer from taking the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.74.

(e) Transferred Property. – If, in one of the four years in which the installment of a credit accrues, the business property with respect to which the credit was claimed is moved to a county in a higher-numbered development tier or to an urban progress zone, the remaining installments of the credit are allowed only to the extent they would have been allowed if the business property had been placed in service initially in the area to which it was moved. If, in one of the four years in which the installment of a credit

accrues, the business property with respect to which a credit was claimed is moved to a county in a lower-numbered development tier or an urban progress zone, the remaining installments of the credit shall be calculated as if the business property had been placed in service initially in the area to which it was moved.

(f) Wage Standard. – For the purposes of this section, a taxpayer satisfies the wage standard requirement of G.S. 105-129.73 only if the taxpayer satisfies the requirement with respect to all of the jobs at the establishment, considered collectively, with respect to which a credit is claimed.

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

"**§ 105-129.79. Credit for investment in real property.**

(a) Credit. – If a taxpayer that has purchased or leased real property in a development tier one area begins to use the property in an eligible business during the taxable year, the taxpayer is allowed a credit equal to thirty percent (30%) of the eligible investment amount if all of the eligibility requirements of G.S. 105-129.73 and of subsection (b) of this section are met. For the purposes of this section, property is located in a development tier one area if the area the property is located in was a development tier one area at the time the taxpayer made a written application for the determination required under subsection (b) of this section. The eligible investment amount is the lesser of (i) the cost of the property and (ii) the amount by which the cost of all of the real property the taxpayer is using in this State in an eligible business on the last day of the taxable year exceeds the cost of all of the real property the taxpayer was using in this State in an eligible business on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer was using the most real property in this State in an eligible business. In the case of property that is leased, the cost of the property is not determined as provided in G.S. 105-129.71 but is considered to be the taxpayer's lease payments over a seven-year period, plus any expenditures made by the taxpayer to improve the property before it is used by the taxpayer if the expenditures are not reimbursed or credited by the lessor. The entire credit may not be taken for the taxable year in which the property is first used in an eligible business but shall be taken in equal installments over the seven years following the taxable year in which the property is first used in an eligible business. When part of the property is first used in an eligible business in one year and part is first used in an eligible business in a later year, separate credits may be claimed for the amount of property first used in an eligible business in each year. The basis in any real property for which a credit is allowed under this section shall be reduced by the amount of credit allowable.

(b) Determination by the Secretary of Commerce. – A taxpayer is eligible for the credit allowed under this section with respect to an establishment only if the Secretary of Commerce makes a written determination that the taxpayer is expected to purchase or lease and use in an eligible business at that establishment within a three-year period at least ten million dollars ($10,000,000) of real property and that the establishment that is the subject of the credit will create at least 200 new jobs within two years of the time

that the property is first used in an eligible business. If the taxpayer fails to timely make the required level of investment or fails to timely create the required number of new jobs, the taxpayer forfeits the credit as provided in G.S. 105-129.73.

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

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

In each of these cases, the taxpayer may nonetheless take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.74.

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

SECTION 1.2. Part 2 of Article 10 of Chapter 143B is amended by adding two new sections to read:

"**§ 143B-437.08. Development tier designation.**

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

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

(1) The county's rank in a ranking of counties by average rate of unemployment from lowest to highest, for the most recent 12 months for which data are available.

(2) The county's rank in a ranking of counties by median household income from highest to lowest, for the most recent 12 months for which data are available.

(3) The county's rank in a ranking of counties by percentage growth in population from highest to lowest, for the most recent 36 months for which data are available.

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

(c) Annual Ranking. – After computing the development factor as provided in this section and making the adjustments required in this section, the Secretary of Commerce shall rank all the counties within the State according to their development factor from highest to lowest. The Secretary shall then identify all the areas of the State by development tier and publish this information. A development tier designation is effective only for the calendar year following the designation.

(d) Data. – In measuring rates of unemployment and median household income, the Secretary shall use the latest available data published by a State or federal agency generally recognized as having expertise concerning the data. In measuring assessed property value, the Secretary shall use the tax records prepared in each county. In measuring population and population growth, the Secretary shall use the most recent estimates of population certified by the State Budget Officer. For the purposes of this section, population statistics do not include people incarcerated in federal or State prisons.

(e) Exception for Certain Small Counties. – Regardless of the actual development factor, any county that has a population of less than 12,000 shall automatically be ranked one of the 40 highest counties, and any county that has a population of less than 50,000 shall automatically be ranked one of the 80 highest counties.

(f) Exception for Development Tier One Areas. – Regardless of the actual development factor, a county designated as a development tier one area shall automatically be ranked one of the 40 highest counties until it has been a development tier one area for at least two consecutive years.

(g) Exception for Two-County Industrial Park. – An eligible two-county industrial park has the lower development tier designation of the designations of the two counties in which it is located if it meets all of the following conditions:

(1) It is located in two contiguous counties, one of which has a lower development tier designation than the other.

(2) At least one-third of the park is located in the county with the lower tier designation.

(3) It is owned by the two counties or a joint agency of the counties.

(4) The county with the lower tier designation contributed at least the lesser of one-half of the cost of developing the park or a proportion of the cost of developing the park equal to the proportion of land in the park located in the county with the lower tier designation.

(h) Exception for Certain Multijurisdictional Industrial Parks. – An eligible industrial park created by interlocal agreement under G.S. 158-7.4 has the lowest

development tier designation of the designations of the counties in which it is located if all of the following conditions are satisfied:

(1) The industrial park is located, at one or more sites, in four or more contiguous counties.

(2) At least two of the counties in which the industrial park is located are development tier one areas.

(3) The industrial park is owned by four or more units of local government or a nonprofit corporation owned or controlled by four or more units of local government.

(4) In each county in which the industrial park is located, the park has at least 300 developable acres. For the purposes of this subdivision, 'developable acres' includes acreage that is owned directly by the industrial park or its owners or that is the subject of a development agreement between the industrial park or its owners and a third-party owner.

(5) The total population of all of the counties in which the industrial park is located is less than 200,000.

(6) In each county in which the industrial park is located, at least sixteen and eight-tenths percent (16.8%) of the population was Medicaid eligible for the 2003-2004 fiscal year based on 2003 population estimates.

"**§ 143B-437.09. Urban progress zone designation.**

(a) Urban Progress Zone Defined. – An urban progress zone is an area comprised of one or more contiguous census tracts, census block groups, or both, or parts thereof, in the most recent federal decennial census that meets all conditions in this subsection.

(1) All land within the zone is located in whole within the primary corporate limits of a municipality with a population of more than 10,000 according to the most recent annual population estimates certified by the State Budget Officer.

(2) Every census tract and census block group that composes part of the zone meets at least one of the following conditions:

a. More than twenty percent (20%) of its population is below the poverty level according to the most recent federal decennial census.

b. At least seventy-five percent (75%) of its area is zoned as commercial and industrial and it is adjacent to a census tract or block group of which at least twenty percent (20%) of the population is below the poverty level.

(3) The area of the zone zoned as commercial and industrial does not exceed thirty-five percent (35%) of the total area of the zone.

(4) The combined area of all zones in the municipality less the smallest census tract included in the zones does not exceed ten percent (10%) of the total area of the municipality in which the zones are located.

(5) No census tract or block group may be in more than one zone.

(b) Designation. – Upon request of a local government, the Secretary of Commerce shall make a written determination whether an area is an urban progress zone that meets the conditions of subsection (a) of this section. A determination under this section is effective until December 31 of the year following the year in which the determination is made. The Department of Commerce shall publish annually a list of all urban progress zones with a description of their boundaries.

(c) Parcel of Property Partially in Urban Progress Zone. – For the purposes of this section, a parcel of property that is located partially within an urban progress zone is considered entirely within the zone if all of the following conditions are satisfied:

(1) At least fifty percent (50%) of the parcel is located within the zone.

(2) The parcel was in existence and under common ownership prior to the most recent federal decennial census.

(3) The parcel is a portion of land made up of one or more tracts or tax parcels of land that is surrounded by a continuous perimeter boundary."

SECTION 1.3. G.S. 105-129.2A(a) reads as rewritten:

"(a) Sunset. – This Article is repealed effective for business activities that occur on or after January 1, ~~2008.~~2007."

SECTION 1.4. There is appropriated from the General Fund to the Department of Revenue the sum of one hundred twenty thousand dollars ($120,000) for the 2006-2007 fiscal year to perform functions related to the administration of Article 3H of Chapter 105 of the General Statutes. There is appropriated from the General Fund to the Department of Commerce the sum of forty thousand dollars ($40,000) for the 2006-2007 fiscal year to perform functions related to the administration of Article 3H of Chapter 105 of the General Statutes.

SECTION 1.5. Section 1.1 of this part is effective for taxable years beginning on or after January 1, 2007. The remainder of this part is effective when it becomes law.

PART II. CONFORMING CHANGES

SECTION 2.1. G.S. 105-129.55(a) reads as rewritten:

"(a) Qualified North Carolina Research Expenses. – A taxpayer that has qualified North Carolina research expenses for the taxable year is allowed a credit equal to a percentage of the expenses, determined as provided in this subsection. Only one credit is allowed under this subsection with respect to the same expenses. If more than one subdivision of this subsection applies to the same expenses, then the credit is equal to the higher percentage, not both percentages combined. If part of the taxpayer's qualified North Carolina research expenses qualifies under subdivision (2) of this subsection and the remainder qualifies under subdivision (3) of this subsection, the applicable percentages apply separately to each part of the expenses.

(1) Small business. – If the taxpayer was a small business as of the last day of the taxable year, the applicable percentage is three percent (3%).

(2) Low-tier research. – For expenses with respect to research performed in ~~an enterprise tier one, two, or three~~a development tier one area, the applicable percentage is three percent (3%).

(3) Other research. – For expenses not covered under subdivision (1) or (2) of this subsection, the percentages provided in the table below apply to the taxpayer's qualified North Carolina research expenses during the taxable year at the following levels:

Expenses Over	Up To	Rate
-0-	$50 million	1%
$50 million	$200 million	2%
$200 million	–	3%"

SECTION 2.2. G.S. 105-164.14(h) reads as rewritten:

"(h) Low Enterprise or Development Tier Machinery. – Eligible taxpayers are allowed an annual refund of sales and use taxes paid under this Article as provided in this subsection.

(1) Refunds. – An eligible person is allowed an annual refund of sales and use taxes paid by it under this Article at the general rate of tax on eligible machinery and equipment it purchases for use in an enterprise tier one area or an enterprise tier two area, as defined in G.S. ~~105-129.3.~~105-129.3 or a development tier one area, as defined in G.S. 143B-437.08. Liability incurred indirectly by the taxpayer for sales and use taxes on these items is considered tax paid by the taxpayer. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the State's fiscal year. Refunds applied for after the due date are barred.

(2) Eligibility. – A person is eligible for the refund provided in this subsection if it is engaged primarily in one of the businesses listed in G.S. 105-129.4(a) in an enterprise tier one area or an enterprise tier two area, as defined in G.S. ~~105-129.3.~~105-129.3 or if it is engaged primarily in one of the businesses listed in G.S. 105-129.73(a) in a development tier one area, as defined in G.S. 143B-437.08.

(3) Machinery and equipment. – For the purpose of this subsection, the term 'machinery and equipment' means engines, machinery, equipment, tools, and implements used or designed to be used in one of the businesses listed in G.S. ~~105-129.4(a).~~105-129.4(a) or 105-129.73(a). Machinery and equipment are eligible for the refund provided in this subsection if the taxpayer places them in service in an enterprise tier one area or an enterprise tier two area, as defined in G.S. ~~105-129.3,~~105-129.3, or a development tier one area, as defined in G.S. 143B-437.08, capitalizes them for tax purposes under the Code, and does not lease them to another party."

SECTION 2.3. G.S. 105-164.14(j)(2) reads as rewritten:

"(j) Certain Industrial Facilities. – The owner of an eligible facility is allowed an annual refund of sales and use taxes as provided in this subsection.

...

(2) Eligibility. – A facility is eligible under this subsection if it meets both of the following conditions:

a. It is primarily engaged in one of the industries listed in this subsection.

b. The Secretary of Commerce has certified that the owner of the facility will invest at least the required amount of private funds to construct the facility in this State. For the purpose of this subsection, costs of construction may include costs of acquiring and improving land for the facility and costs of equipment for the facility. If the facility is located in ~~an enterprise tier one, two, or three~~development tier one area as defined in ~~G.S. 105-129.3,~~G.S. 143B-437.08 the required amount is fifty million dollars ($50,000,000). For all other facilities, the required amount is one hundred million dollars ($100,000,000). In the case of a computer manufacturing facility, the owner may invest these funds either directly or indirectly through a related entity or strategic partner as those terms are defined in G.S. 105-129.61. In the case of a computer manufacturing facility, the term 'facility' has the same meaning as under G.S. 105-129.61."

SECTION 2.4. Reserved.

SECTION 2.5. G.S. 143B-437.04 reads as rewritten:

"**§ 143B-437.04. Community development block grants.**

(a) The Department of Commerce shall adopt guidelines for the awarding of Community Development Block Grants to ensure that:

(1) No local match is required for grants awarded for projects located in ~~enterprise~~ development tier one areas as defined in G.S. ~~105-129.3.~~143B-437.08.

(2) To the extent practicable, priority consideration for grants is given to projects located in ~~enterprise~~ development tier one areas as defined in G.S. ~~105-129.3~~143B-437.08 or in ~~development~~ urban progress zones that have met the conditions of subsection (b) of this section.

(b) In order to qualify for the benefits of this section, after an area is designated ~~a development~~an urban progress zone under G.S. ~~105-129.3A,~~143B-437.09 the governing body of the city in which the zone is located must adopt a strategy to improve the zone and establish ~~a development~~an urban progress zone committee to oversee the strategy. The strategy and the committee must conform with requirements established by the Secretary of Commerce."

SECTION 2.6. G.S. 143B-437.51(5a) is recodified as G.S. 143B-437.51(4a) and reads as rewritten:

"(4a) ~~Enterprise~~ Development tier. – The classification assigned to an area pursuant to G.S. ~~105-129.3.~~143B-437.08."

SECTION 2.7. G.S. 143B-437.53(a) reads as rewritten:

"(a) Minimum Number of Eligible Positions. – A business may apply to the Committee for a grant for any project that creates the minimum number of eligible positions as set out in the table below. If the project will be located in more than one ~~enterprise~~ development tier area, the location with the highest ~~enterprise~~ development tier area designation determines the minimum number of eligible positions that must be created.

~~Enterprise~~ Development Tier Area	Number of Eligible Positions
Tier One	10
Tier Two	~~10~~20
Tier Three	~~10~~20
~~Tier Four~~	~~20~~
~~Tier Five~~	~~20~~"

SECTION 2.8. G.S. 143B-437.55(c)(3) reads as rewritten:

"(c) Annual Reports. – The Committee shall publish a report on the Job Development Investment Grant Program on or before April 30 of each year. The report shall include the following:

...

(3) The number and ~~enterprise~~ development tier area of eligible positions created by projects with respect to which grants were awarded."

SECTION 2.9. G.S. 143B-437.56(d) reads as rewritten:

"(d) The percentage established in the agreement shall be reduced by one-fourth for any eligible position that is located in ~~an enterprise~~ a development tier ~~four or five~~two or three area."

SECTION 2.10. G.S. 158-7.3(a) reads as rewritten:

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

(1) Development project. – A capital project that includes capital expenditures by both private persons and one or more units of local government and that increases net employment opportunities for residents of the development district or within a two-mile radius of the project, whichever is larger, and increases the local government tax base.

If the district in which such a project will occur is outside a city's central business district (as that district is defined by resolution of the city council, which definition is binding and conclusive), then, of the private development forecast for a development project by the development financing plan for the district in which the project will occur, a maximum of twenty percent (20%) of the plan's estimated square footage of floor space may be proposed for use in retail sales, hotels, banking, and financial services offered directly to consumers, and other commercial uses other than office space. The twenty percent (20%) limitation in the preceding sentence does not apply to

development financing districts located in ~~an enterprise~~ a development tier one area, as defined in G.S. ~~105-129.3,~~143B-437.08 and created primarily for tourism-related economic development, such as developments featuring facilities for exhibitions, athletic and cultural events, show and public gatherings, racing facilities, parks and recreation facilities, art galleries, museums, and art centers.

(2) Publish. – Insertion in a newspaper qualified under G.S. 1-597 to publish legal advertisements in the county or counties in which the unit is located.

(3) Unit or unit of local government. – A county, city, town, or incorporated village."

SECTION 2.11. G.S. 19A-64(c) reads as rewritten:

"(c) Distribution. – The Department shall make payments from the Spay/Neuter Account to eligible counties and cities who have made timely application for reimbursement within 30 days of the closing date for receipt of applications for that quarter. In the event that total requests for reimbursement exceed the amounts available in the Spay/Neuter Account for distribution, the monies available will be distributed as follows:

(1) Fifty percent (50%) of the monies available in the Spay/Neuter Account shall be reserved for reimbursement for eligible applicants within ~~enterprise tier one, two, and three~~development tier one areas as defined in G.S. ~~105-129.3.~~143B-437.08. The remaining fifty percent (50%) of the funds shall be used to fund reimbursement requests from eligible applicants in ~~enterprise tier four and five~~development tier two and three areas as defined in G.S. ~~105-129.3.~~143B-437.08.

(2) Among the eligible counties and cities in ~~enterprise tier one, two, and three~~development tier one areas, reimbursement shall be made to each eligible county or city in proportion to the number of dogs and cats that have received rabies vaccinations during the preceding fiscal year in that county or city as compared to the number of dogs and cats that have received rabies vaccinations during the preceding fiscal year by all of the eligible applicants in ~~enterprise tier one, two, or three~~development tier one areas.

(3) Among the eligible counties and cities in ~~enterprise tier four and five~~development tier two and three areas, reimbursement shall be made to each eligible county or city in proportion to the number of dogs and cats that have received rabies vaccinations during the preceding fiscal year in that county or city as compared to the number of dogs and cats that have received rabies vaccinations during the preceding fiscal year by all of the eligible applicants in ~~enterprise tier four and five~~development tier two and three areas.

(4) Should funds remain available from the fifty percent (50%) of the Spay/Neuter Account designated for ~~enterprise tier one, two, or three~~development tier one areas after reimbursement of all claims by

eligible applicants in those areas, the remaining funds shall be made available to reimburse eligible applicants in ~~enterprise tier four and five~~development tier two and three areas."

SECTION 2.12. G.S. 106-744(c2) reads as rewritten:

"(c2) A county that is ~~an enterprise tier four county or an enterprise tier five~~a development tier two or three county, as these tiers are defined in ~~G.S. 105-129.3(a),~~G.S. 143B-437.08, and that has prepared a countywide farmland protection plan shall match fifteen percent (15%) of the Trust Fund monies it receives with county funds. A county that has not prepared a countywide farmland protection plan shall match thirty percent (30%) of the Trust Fund monies it receives with county funds. A county that is ~~an enterprise tier one county, an enterprise tier two county, or an enterprise tier three county, as these counties are~~a development tier one county, as defined in ~~G.S. 105-129.3(a),~~G.S. 143B-437.08, and that has prepared a countywide farmland protection plan shall not be required to match any of the Trust Fund monies it receives with county funds."

SECTION 2.13. Reserved.

SECTION 2.14. G.S. 146-22.3(d) reads as rewritten:

"(d) Application. – This section applies only to land acquired in counties designated as ~~an enterprise tier one or enterprise tier two~~a development tier one area under G.S. ~~105-129.3.~~143B-437.08."

SECTION 2.15. G.S. 146-22.4(c) reads as rewritten:

"(c) Application. – This section applies only to land acquired in counties designated as ~~an enterprise tier one or enterprise tier two~~a development tier one area under G.S. ~~105-129.3.~~143B-437.08."

SECTION 2.16. G.S. 146-22.5(b) reads as rewritten:

"(b) Application. – This section applies only to land acquired in counties designated as ~~an enterprise tier one or enterprise tier two~~a development tier one area under G.S. ~~105-129.3.~~143B-437.08."

SECTION 2.17. G.S. 153A-15.1(e) reads as rewritten:

"(e) Application. – This section applies only to land acquired in counties designated as ~~an enterprise tier one or enterprise tier two~~a development tier one area under G.S. ~~105-129.3.~~143B-437.08."

SECTION 2.18. G.S. 160A-425.1(c) reads as rewritten:

"(c) If an inspector declares a residential building or nonresidential building or structure to be unsafe under subsection (b) of this section, the inspector must affix a notice of the unsafe character of the structure to a conspicuous place on the exterior wall of the building. For the purposes of this section, the term "community development target area" means an area that has characteristics of ~~a development zone under G.S. 105-129.3A,~~an urban progress zone under G.S. 143B-437.09, a 'nonresidential redevelopment area' under G.S. 160A-503(10), or an area with similar characteristics designated by the city council as being in special need of revitalization for the benefit and welfare of its citizens."

SECTION 2.19. G.S. 160A-426(c) reads as rewritten:

"(c) If an inspector declares a nonresidential building or structure to be unsafe under subsection (b) of this section, the inspector must affix a notice of the unsafe character of the structure to a conspicuous place on the exterior wall of the building. For the purposes of this section, the term "community development target area" means an area that has characteristics of ~~a development zone under G.S. 105-129.3A,~~an urban progress zone under G.S. 143B-437.09, a 'nonresidential redevelopment area' under G.S. 160A-503(10), or an area with similar characteristics designated by the city council as being in special need of revitalization for the benefit and welfare of its citizens."

SECTION 2.20. G.S. 105-129.51(a) reads as rewritten:

"(a) A taxpayer is eligible for the credit allowed in this Article if it satisfies the requirements of G.S. ~~105-129.4(b), (b2), (b3), and (b4)~~105-129.73(c), (d), (e), and (f) relating to wage standard, health insurance, environmental impact, and safety and health programs, respectively."

SECTION 2.21. G.S. 105-259(b) reads as rewritten:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

...

(24) To furnish the Department of Commerce and the Employment Security Commission a copy of the qualifying information required in G.S. ~~105-129.7(b).~~105-129.7(b) or 105-129.76(b).

...

(27) To publish the information required under G.S. 105-129.6, 105-129.19, 105-129.26, 105-129.38, 105-129.44, 105-129.65A, 105-129.75, 105-130.41, 105-130.45, 105-151.22, and 105-164.14.

...

(36) To furnish the Department of Commerce with the information needed to complete the studies required under G.S. 105-129.2A and G.S. 105-129.72."

SECTION 2.22. This part becomes effective January 1, 2007.

PART III. EFFECTIVE DATES.

SECTION 3.1. Except as otherwise provided, this act is effective when it becomes law.

HOUSE BILL 2170:
Bill Lee Changes

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 17, 2006
Introduced by:	Reps. Harrell, Daughtridge, Gibson, Owens	**Summary by:**	Y. Canaan Huie
Version:	PCS to First Edition H2170-CSLYx-72		Committee Counsel

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, 2007; would sunset the Bill Lee Act for activities occurring on or after January 1, 2007, rather than January 1, 2008; and would make conforming changes to other statutes that refer to provisions of the Bill Lee Act.

BILL ANALYSIS:

Part I. Tax Credits for Growing Businesses.

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, and for worker training. 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. In 2005, the General Assembly approved a two-year extension of the Act, until January 1, 2008, in order to provide additional time to study alternatives to the Act.[1]

This bill would create a new package of State tax incentives to replace the Bill Lee Act for most taxpayers. These incentives would become effective January 1, 2007, and would expire January 1, 2011. Taxpayers that are eligible for the later repeal date of the Act would be able to choose to take

[1] There are several exceptions to the 2008 sunset date. Interstate air couriers are eligible to claim the credits for business activity that occurs on or before January 1, 2010, provided that the interstate air courier entered into a real estate lease on or before January 1, 2006 with an airport authority that provides for the lease of at least 100 acres of land for a term of at least 15 years. "Eligible major industries" that qualify as such before January 1, 2006, are also allowed to claim credits for business activity that occurs on or before January 1, 2010. A taxpayer is an eligible major industry if it will invest at least $100 million in acquiring, constructing, and equipping a facility and it is engaged in bioprocessing, the manufacture or distribution of pharmaceuticals or medicines, aircraft manufacturing, computer manufacturing, motor vehicle manufacturing, or semiconductor manufacturing. In addition, projects that are located in development zones are eligible for credits for business activities occurring before January 1, 2010, if all of the following conditions are met: before January 1, 2006, the taxpayer signs a letter of commitment with the Department of Commerce; the Secretary of Commerce makes a written determination that the taxpayer will invest $10 million and create at least 300 new jobs at the facility within a three-year period; and the taxpayer invests at least $4 million and creates at least 20 new jobs at the facility before January 1, 2006.

credits under the current Act or under the bill. 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 adjusted assessed property value. Regardless of the development factor, any county with a population of less than 12,000 would automatically be included 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. Regardless of the development factor, a county first designated as a tier one area in one of the two previous years would be included in the counties with the 40 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.

This differs in several keys ways from the Bill Lee Act. First, the Bill Lee Act tier designation is not required until December 31. Second, in order to make the Bill Lee tier designations, 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 proposed legislation would substitute median household income for per capita income and add the new factor related to adjusted assessed property value per capita. Third, under the Bill Lee Act, counties are divided into five tiers rather than three. Fourth, under this proposal, the number of counties in a tier would be fixed. If one county received a lower tier designation because of the population or low-tier status exceptions, another county would be moved to a higher tier. Under the Bill Lee Act, the adjustments may move a county to a lower tier, but they do not result in any county being assigned to a higher tier.

The Bill Lee Act also contains exceptions to the tier designation structure for certain multi-jurisdictional industrial parks. Under those exceptions, taxpayers located in certain industrial parks that are owned by multiple jurisdictions are eligible for credits as if they were located in the lower-tiered jurisdiction. These exceptions are retained in this bill.

Development zones are another key feature of the Bill Lee Act.[2] Development zones were intended to be areas of high poverty within cities. Over the years, it has become clear that the development zones often include areas that are neither high-poverty nor particularly urban. This bill would replace development zones with urban progress (UP) zones. UP zones are more narrowly focused than development zones. First, an UP zone must be entirely within the corporate limits of a municipality with a population of at least 10,000. Development zones are located at least partially in a municipality with a population of at least 5,000. Second, UP zones must meet more stringent guidelines with respect

---

[2] Under the Bill Lee Act, the Department of Commerce is also responsible for designating development zones. Development zones were intended to be 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.

to poverty within the zone. Third, the total area of all UP zones in a municipality may comprise no more than 15% of the area of a municipality: there is no similar restriction on development zones.

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 portion of a credit with respect to the credit for creating jobs or investing in business property could be carried forward for the succeeding five years. This is also the standard carryforward period for the Bill Lee Act. Any unused portion of a credit with respect to the credit for investing in real property could be carried forward for the succeeding 15 years, as compared to the succeeding 20 years under the Bill Lee Act. Finally, as with the Bill Lee Act, credits with respect to a large investment (at least $150 million) could be carried forward for 20 years. This bill would shorten the carryforward period for some credits and eliminates some enhanced carryforward provisions altogether.

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 type of credit the taxpayer intended to claim with respect to an establishment. The fee would be deposited in the General Fund, and the positions at the Departments of Revenue and Commerce that oversee the program would be funded through the General Fund. The Bill Lee Act contains a similar fee requirement, but under the Act the fees are kept by the Departments as departmental receipts: the positions that oversee the Bill Lee are funded by those receipts. 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 May 1, the Department of 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 respect to type of business. Under the proposed new Article, business type generally 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 hub.
- Corporate headquarters, but only if additional eligibility requirements are satisfied.
- Customer service call centers.
- Electronic shopping and mail order houses.
- Information technology and services.
- Manufacturing.
- Motorsports facilities.
- 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 establishment, 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.
- 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.

---

[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 bill, an establishment means a single physical location. Under the Bill Lee Act, 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. Under NAICS, an establishment is generally a single physical location; although there are many exceptions to this generality.

- 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 facilities and motorsports racing teams would be eligible for credits whereas they are not currently eligible under the Bill Lee Act. A larger group of manufacturers, warehousers, 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 restricted to those facilities that are corporate headquarters and credits for data processing and computer services would be replaced by credits for information technology and services.

In order for a corporate headquarters to qualify for credits under the proposed legislation, the establishment would be required to create at least 75 new jobs within a 24-month period. A taxpayer that satisfied this job creation requirement would be eligible for credits in the year in which the requirement was satisfied and the two succeeding years. A taxpayer that later created an additional 75 new jobs in a 24-month period could be eligible for an additional three-year period of eligibility, but only if the job creation occurred outside of any other period of eligibility.

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.[4] For development tiers two and three, the jobs provided by the taxpayer would be required to pay at least the lower of 90% 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.[5] Under the proposed legislation, for activities that occur in UP zones, the wage standard is lower than for activities that occur in development tiers two and three outside of UP zones. For UP zones, the wage standard is 90% of the lesser of the average county wage and the average State wage. Under the Bill Lee Act, there is no wage standard for activities occurring in development zones.

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

[4] Legislation enacted in 2002 eliminated the wage standard in enterprise tiers one and two under the Bill Lee Act. Under the proposed new Article, no wage standard would apply in development tier one. Development tier one under the proposed new Article is roughly equivalent to enterprise tiers one and two under the Bill Lee Act.

[5] 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.

no wage standard for the credit for investing in real property under the proposed new Article because that credit would be available only in the lower-tiered counties where the wage standard requirement would not apply.

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.[6]

---

[6] 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

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 years.[7] 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 retain these expiration provisions.

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.[8] If the taxpayer created jobs in more than one county during a year, the threshold would apply separately to each county. If the taxpayer created jobs at more than one establishment in a single county during a year, the threshold would apply jointly to all establishments within the county. In addition, the amount of the credit would vary depending on the development tier designation of the area in which the job was located. A job is located in an area if 50% or more of the employee's duties are 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. In addition, jobs transferred within the State from a related member of the taxpayer to the taxpayer 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. In addition, a job created in an UP zone would be eligible for an additional credit of $1,000 and if that job were filled by a resident of the zone or a long-term unemployed worker[9] it would be further increased by an additional $2,000.

Area Development Tier	Amount of Credit	Threshold
Tier One	$12,500	5
Tier Two	5,000	10
Tier Three	750	15

---

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 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.

[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.

[8] For jobs created in an UP zone, the threshold applicable to development tier one would apply.

[9] A "long-term unemployed worker" is defined as an individual that has been totally unemployed for at least the preceding 26 consecutive weeks.

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 planned to create new jobs in a specific area during the next two years could sign a letter of commitment with the Department of Commerce in order to lock-in the current year's development tier designations for the purposes of this credit. If the taxpayer created the jobs within the next two years, 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 two years, 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.

Credit for investing in machinery and equipment, G.S. 105-129.79. Under this bill, a taxpayer would be allowed a credit for the amount by which the cost of the eligible investment amount of business property placed into service during a taxable year exceeds a threshold. 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:

Area Development Tier	Threshold	Credit Percentage
Tier One[10]	$ -0-	7%
Tier Two	1,000,000	5%

[10] For the purposes of this credit, investment that occurs in an UP zone is subject to the threshold and percentage applicable to activity that occurs in a development tier one area.

Tier Three	2,000,000	3.5%

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 planned to place specific business property in service at a specific location within the next two years 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 two years, 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 year in which the business property was placed in service. If the taxpayer did not place the business property in service in the next two years, 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 differ from the thresholds 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 differs from the percentage for the existing credit for some taxpayers.

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 taxpayer would create at least 200 new jobs at the location 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 either of the existing Bill Lee Act credits for investment in real 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.

The only significant difference between the proposed credit for investment in real property and the Bill Lee Act credit for substantial investment in other property is the carryforward period. Under the Bill Lee Act, unused portions of the credit can be carried forward for up to 20 years. Under the proposed legislation, unused portions of the credit could be carried forward for up to 15 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; however, the technology commercialization credit was designed with a specific project in mind that never came to fruition and therefore the credit has never been claimed.
- *G.S. 105-129.10. Credit for research and development.* The Bill Lee Act contained 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 though a business that would have been eligible for this credit under the Bill Lee Act would be eligible for the proposed credit for investing in real property if the requirements of that proposed credit are satisfied.
- *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.

Other Issues Related to Bill Lee Act

Extension of Bill Lee Act for taxpayers signing a letter of commitment. This bill would allow certain taxpayers to claim credits under the Bill Lee Act rather than the proposed legislation in certain circumstances. There are any number of companies that are currently considering expanding in or relocating to North Carolina. Many of the expansions or relocations have been considered assuming that the credits allowed under the Bill Lee Act would be available through at least its current repeal date, 2008. For some taxpayers, the Bill Lee Act would allow for more generous credits whereas for other taxpayers the credits under the proposed legislation would be generous. This bill would allow taxpayers that sign a letter of commitment with the Department of Commerce on or before December 31, 2006, that describes the specific project to claim credits under the Bill Lee Act for the 2007 taxable year rather than under the proposed legislation.

Expansion of development zone definition. In 2004, Novo Nordisk made a significant investment in machinery and equipment and created a significant number of new jobs at a facility in Johnston County. The company had been advised that the facility was located in a development zone and the company would, therefore, be eligible for enhanced credits. In fact, the facility was not in a development zone. This provision would expand the definition of a development zone to include an economic development and training district. There is only one such district in the State and the authorizing legislation was drafted in such a way that it is unlikely another area will be able to qualify. The Novo Nordisk facility in question is located in that district and would thus become eligible for the enhanced credits. This change is retroactive to the 2004 taxable year.

Part II. Conforming Changes.

Part II of the bill would make a number of conforming changes to the statutes because of the changes that would be made under Part I of this bill. Since the creation of the Bill Lee Act in 1996, many other programs have adopted the enterprise tier designation as a proxy for the economic viability or the available resources of a county. Many of these programs deal with economic development; but the tier structure has also been adopted as a proxy in such areas as animal control and wetlands mitigation. In addition, other programs refer to other aspects of the Bill Lee Act such as development zones or the wage standard. Because the Bill Lee Act would largely be replaced by the new Article in this bill, the changes in Part II of this bill should help to lessen confusion that would be inherent in the use of two different tier systems. Because the tier structures are not equivalent, the changes in this Part will benefit some areas while reducing benefits to other areas. The changes are briefly summarized below.

- *Section 2.1.* This section would conform the credit for research and development expenses to the new tier structure. Under current law, the credit for research and development expenses is more generous if the research is conducted in an enterprise tier one, two, or three area. Under this bill, research conducted in a development tier one area would be eligible for the more generous credit. Because development tier one will contain fewer counties than enterprise tiers one, two, and three combined, this change could result in some taxpayers being eligible for a smaller credit.

- *Section 2.2.* This section would conform the sales and use tax refund for low enterprise tier machinery and equipment to the new tier structure. Under current law, a taxpayer is eligible for a refund of sales and use tax paid at the general rate on machinery and equipment put into service in enterprise tier one and two areas. This section adds a reference to development tier one. Because development tier one is expected to be roughly equivalent to, though including more counties than, enterprise tiers one and two combined, this change should have limited effect.

- *Section 2.3.* This section would conform the sales and use tax refund on building materials for major eligible industrial facilities to the new tier structure. Under current law, a taxpayer must invest at least $50 million in an eligible facility in an enterprise tier one, two, or three area or $100 million in an eligible facility in an enterprise tier four or five area to be eligible for the refund. This section changes the requirement so that the $50 million threshold applies to facilities in development tier one and the $100 million threshold applies to facilities in tiers two and three. Because development tier one will contain fewer counties than enterprise tiers one, two, and three combined, this change could result in some taxpayers being ineligible for a refund.

- *Section 2.4.* This section would make changes to the Industrial Development Fund to conform to the tier designation changes. Under the IDF, local government units in enterprise tiers one, two, and three are eligible for grants to help create jobs. The grant funds may be used in limited ways mostly related to the provision of infrastructure, equipment, or building repairs. Generally, a local match is required unless the local government unit is in an enterprise tier one area. This provision would make the counties that have the 65 highest rankings (development tier one and slightly more than half of development tier two) eligible for grants under the IDF. In addition, no local match could be required for the counties that have the 25 highest rankings (slightly more than half of development tier one). The intent was to maintain the status quo with respect to the IDF.

- *Section 2.5.* This section would conform the guidelines adopted by the Department of Commerce relating to community development block grant funds to the new tier structure. Under current law, those guidelines must ensure that grants award in enterprise tier one areas do not require a local match and that priority is given to projects in enterprise tier one areas and development zones. This section would change those references. The reference to enterprise tier one would be changed to the counties that have the 25 highest rankings (slightly more than half of development tier one) and the reference to development zones would be changed to UP zones. Because the counties that have the 25 highest rankings would be roughly equal to enterprise tier one, this change should maintain the status quo with respect to enterprise tier one areas. On the other hand, because UP zones are more restrictive than development zones, this change could have the effect of eliminating some projects from priority consideration.
- *Section 2.6.* This section changes a definitional reference under the JDIG statutes.
- *Section 2.7.* This section would conform the JDIG job creation requirements to the new tier structure. Under current law, a business must create at least 10 new jobs in an enterprise tier one, two, or three area or 20 new jobs in an enterprise tier four or five area to be eligible for consideration for JDIG. This section would change those requirements so that a business must create at least 10 new jobs in a development tier one area or 20 new jobs in a development tier two or three area to be eligible for consideration. Because development tier one will contain fewer counties than enterprise tiers one, two, and three combined, this change could result in some taxpayers being ineligible for consideration for JDIG. However, as a practical matter, all businesses that have received JDIG grants have created far more jobs than the minimum required and it is therefore unlikely that this change would have any practical effect.
- *Section 2.8.* This section would conform a reference to tiers under the JDIG reporting requirements.
- *Section 2.9.* This section would conform the JDIG grant reduction requirements to the new tier structure. Under current law, a business that is located in an enterprise tier four or five area when the grant is awarded would have the amount of a grant reduced by 25%, with that reduction flowing to the Utility Account of the Industrial Development Fund rather than to the business. This section would change that reference. Under this provision, for development tiers three, the amount of the reduction would remain 25% and for development tier two, the reduction would be equal to 15%. This section would roughly maintain the status quo in enterprise tier five, would provide a benefit to enterprise tier four, and would lessen the amount of the grant for enterprise tier three.
- *Section 2.10.* This section would conform a provision relating to tax increment financing to the new tier structure. This section would expand an exception created for financing districts related to tourism-related economic development projects. Under current law, this exception is allowed only in an enterprise tier one area. This section would allow that exception in a development tier one area. Because development tier one would contain more counties than enterprise tier one, this change would expand this exception.
- *Section 2.11.* This section would conform provisions dealing with the Spay/Neuter Account to the new tier structure. Under existing law, there is an account that helps offset the costs incurred by cities and counties for the spaying and neutering of animals. Fifty percent of the

funds in the account are reserved for cities and counties in enterprise tiers one, two, and three. The remaining 50% is reserved for cities and counties in enterprise tiers four and five. If there are excess funds after all needs have been met in enterprise tier one, two and three areas, those funds are transferred and used in enterprise tier four and five areas. The funds designated for a group of tier areas are then allocated based on population. This section would change this breakdown so that the division would be between development tier one areas and development tier two and three areas. Because development tier one will contain fewer counties than enterprise tiers one, two, and three combined, this change could result in some cities and counties getting more assistance and some cities and counties getting less assistance.

- *Section 2.12.* This section would conform a provision relating to agricultural easements and the Farmland Preservation Trust Fund to the new tier structure. Under current law, enterprise tier one, two, and three counties that have prepared countywide farmland protection plans are not required to match funds from the Farmland Preservation Trust Fund used to purchase agricultural easements. This section would change that reference to development tier one. Because development tier one will contain fewer counties than enterprise tiers one, two, and three combined, this change could result in some counties being newly subject to the match requirement.

- *Section 2.13.* This section corrects a definition relating to the Clean Water Management Trust Fund. That statue referred to a "economically distressed county as defined by G.S. 105-129.3". Although G.S. 105-129.3 is the statute that specifies tier designation under the Bill Lee Act, there is no definition in that statute of an "economically distressed county." There is, however, a definition of an economically distressed county under this statute dealing with the Industrial Development Fund. This provision corrects that statutory reference. As discussed above, the definition under the Industrial Development Fund was changed in section 2.4 of this bill, but that change roughly maintained the status quo.

- *Section 2.14 through Section 2.17.* These sections would conform provisions dealing with wetlands mitigation to the new tier structure. Under current law, when the State purchases land for wetlands mitigation it is required to make a payment in lieu of taxes to the county in which the land is located if the county is an enterprise tier one or two area. These sections would change those references to development tier one area. Because development tier one would have slightly more counties than enterprise tiers one and two combined, this change would require the State to make these payments in more instances.

- *Section 2.18 and Section 2.19.* These sections would conform provisions dealing with condemnation of unsafe buildings to the new tier structure. Under current law, cities have more flexibility in condemning nonresidential buildings as unsafe if the building is located in a "community development target area". A community development target area is one that has characteristics of a development zone or similar characteristics. These sections would change the references from development zone to UP zone. Because of the amorphous nature of the definition of "community development target area", this change should not have any impact.

- *Section 2.20.* This section would conform eligibility requirements for the credit for research and development to the new Article. Under current law, in order to be eligible for that credit the taxpayer must satisfy the wage standard, health insurance, environmental impact and safety and health record requirements under the Bill Lee Act. This section would change the

reference to those requirements under the new Article. This change could have the effect of making more taxpayers eligible for the credit because the wage standard requirement under the new Article is less strenuous than the requirement under the Bill Lee Act.

- *Section 2.21.* This section would amend the statutes relating to tax secrecy to ensure that the Department of Revenue could share information that is needed to administer the new Article with the Department of Commerce.

H2170e1-SMLY-CSLYx-72

GENERAL ASSEMBLY OF NORTH CAROLINA
Session 2005

FISCAL ANALYSIS MEMORANDUM

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

DATE: June 20, 2006

TO: House Finance Committee

FROM: David Crotts
Fiscal Research Division

RE: House Bill 2170 (Proposed House Committee Substitute)

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES:	-0-	-0-	(See "Assumptions and Methodology")		
EXPENDITURES:					
POSITIONS (cumulative):					

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

EFFECTIVE DATE: Included in "Bill Summary"

BACKGROUND INFORMATION: The William S. Lee Quality Jobs and Business Expansion Act (Bill Lee Act) was enacted in 1996 and has been modified on numerous occasions. The 1996 legislation included a January 1, 2002 sunset of the full Act. During the 2000 session the sunset was extended to January 1, 2006. Finally, the 2005 General Assembly moved the sunset to January 1, 2008 with the expectation that the 2006 session would overhaul the entire Act. The PCS for HB 2170 represents that re-write.

The current Bill Lee Act is a package of State tax incentives adopted during the 1996 session. The incentives are primarily in the form of state tax credits for investing in machinery and equipment, acquiring certain real property, creating jobs, establishing a central administrative office, and training workers. The original research and development credit has been re-codified elsewhere

Under the Act 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.

BILL SUMMARY: Replaces the existing Bill Lee Act with a new system of more narrowly focused job creation and investment tax credits. The new package generally becomes effective beginning with activity taking place on or after January 1, 2007 and sunsets January 1, 2011. The existing Bill Lee Act is eliminated on January 1, 2007 with one exception: companies currently considering expanding in or relocating to North Carolina would be allowed to claim credits for the 2007 tax year under the Act if the taxpayer signs a letter of commitment with the Department of Commerce by December 31, 2006. The letter would require that the specific project be described.

Beginning on the next page is a comparison of the major features of the current Bill Lee Act and the proposed system.

	Current Law	HB 2170
Tier Structure (Tier 1 includes most distressed counties)	5 enterprise Tiers: - 10 counties in Tier 1 - 15 counties in Tier 2 - 25 counties each in Tiers 3, 4, and 5 Exceptions may move some counties to more distressed Tier level	3 development Tiers: - 40 counties in Tier 1 - 40 counties in Tier 2 - 20 counties in Tier 3 Exceptions may move some counties to a lower tier and some to a higher tier
Tier Rankings	- 3 factors determine initial ranking: unemployment, per capita income, population, growth - Adjustments based on Tier 1 or 2 status, population level, unemployment level, and multi-county parks - Population figures include prisoners	- 4 factors determine initial ranking: unemployment, median household income, population growth, and assessed property value per capita - Same adjustments as under Bill Lee Act except for high high unemployment - Population figures do not include prisoners
Distressed Zones Within a County (Supplemental Assistance)	Development zones eligibility: - At least partly within a city of 5,000 or more - Zone population of at least 1,000 - 20% of zone population is below poverty level - Every census tract in zone meets certain poverty guidelines - Area may be in one zone	Urban progress zones eligibility: - Wholly with a city of 10,000 or more - Each track must meet poverty or industrial requirements - Non-residential tracks no more than 35% of zone - Zones no more than 15% of municipality
Taxes to Which Credits Apply	- Credit is taken against either income, franchise, or insurance premiums tax - Credit may not exceed 50% of liability of tax selected - Carryforward period ranges from 5 years to 20 years	- Credit is taken against income, franchise, or insurance premiums taxes or combination of these taxes - Credit may not exceed 50% of combined tax liability - Carryforward period ranges from 5 years to 20 years

	Current Law	HB 2170
Activity Eligibility Factors	Depends on a combination of factors including: - Primary activity of a taxpayer as a whole - Primary activity of the special establishment - Enterprise Tier designation of the establishment - Number of new jobs created	- Eligibility depends on the primary activity of the specific establishment - However, company headquarters must create 75 jobs over two years
Eligible Industries	- Air courier services - Central office or aircraft facility - Computer services - Customer service center - Data processing - Electronic mail order house - Manufacturing - Warehousing - Wholesale trade	Same as current law with following exceptions: - Aircraft maintenance and repair is established as a separate category - Central administrative office is changed to company headquarters - Data processing and computer services combined as information technology and services - Motorsports racing team and motorsports racing facilities added - Research and development added
Quality Jobs	- Provision of health insurance - OSHA record - Environmental record - No overdue tax debts	Same As Current Law
Wage Standard	- No wage standard in Tiers 1 and 2 and development zones - Wage standard equal to 110% of the lesser of: - County wage - State wage - County wage adjusted by the wage/income factor	- No wage standard in Tier 1 - Wage standard equal to the lesser of: - 110% of the State wage - 90% of the county wage - Wage standard in Urban Progress zone is 90% of the lower wage

	Current Law	HB 2170
Specific Credits	- Job creation - Investing in machinery & equipment - Technology commercialization - Worker training - Central office or aircraft facility property - Other real property - Development zone projects	- Job creation - Investing in business property - Investing in real property
Job Creation Credit	- Must have 5 full-time employees and create at least one new job - Credit amount varies depending on enterprise Tier and development zone: - $12,500 per job in Tier 1 - $4,000 per job in Tier 2 - $3,000 per job in Tier 3 - $1,000 per job in Tier 4 - $500 per job in Tier 5 - Additional $4,000 for development zone - Taken over 4 years	- Taxpayer must meet a job creation threshold before becoming eligible for the credit: - 5 new jobs in Tier 1 - 10 new jobs in Tier 2 - 15 new jobs in Tier 3 - Taken over 4 years - Jobs transferred from a related member not included - Credit varies depending on Tier and Urban Progress zone: - $12,500 per job in Tier 1 - $5,000 per job in Tier 2 - $750 per job in Tier 3 - Additional $1,000 for Urban Progress zone ($2,000 for hiring a zone resident or long-term unemployed worker in zone)
Machinery & Equipment Credit	- Credit taken in seven installments - Credit amount varies depending on enterprise Tier level: - 7% in Tiers 1 and 2 - 6% in Tier 3 - 5% in Tier 4 - 4% in Tier 5 - Machinery and equipment definition narrowly drawn	- Credit taken in four installments - Credit amount varies depending on development Tier level: - 7% in Tier 1 - 5% in Tier 2 - 3.5% in Tier 3 - Business property definition broadly drawn

	Current Law	HB 2170
	- Credit is based on the eligible investment amount above a threshold: - $0 in Tier 1 - $100,000 in Tier 2 - $200,000 in Tier 3 - $1,000,000 in Tier 4 - $2,000,000 in Tier 5	- Credit is based on the eligible investment amount above a threshold: - $0 in Tier 1 - $1,000,000 in Tier 2 - $2,000,000 in Tier 3
Real Property Credit	- Require activity in lower-tiered area - Require 200 new jobs and $10 million investment - Credit equal to 30% of eligible investment amount - Credit taken over 7 years - Twenty year carryforward	Same as current law except for 15 year carryforward
Credit Application Fee	- $500 for each type of credit - $1,500 maximum fee per tax year - Proceeds retained as agency receipts - Positions funded by receipts	- $500 for each type of credit - No maximum fee - Proceeds go to General Fund - Positions approved during budget process

ASSUMPTIONS AND METHODOLOGY: **2006-07 and 2007-08 Fiscal Years.** The new system is effective for activity taking place on or after January 1, 2007. In general the credits are taken in installments over a four-year period beginning in the tax year following the year of activity. This means that the first impact of the bill will be for 2008 tax year, which essentially converts to the 2008-09 fiscal year.

SOURCES OF DATA:

TECHNICAL CONSIDERATIONS: None

House Bill 2170 PCS — **Bill Lee Act Changes**

Recommended by House Select Committee on Economic Development

Supported by: *N.C. Department of Commerce*
N.C. Economic Developers Association
North Carolina Citizens for Business & Industry
North Carolina Metropolitan Coalition

Main Features

- Extends sunset of Bill Lee Act tax credits through Jan. 1, 2011.
  - *Credits currently expire Dec. 31, 2007.*
- Simplifies eligibility process and make more businesses eligible.
- Makes wage test fairer.
- Simplifies and stabilize tier system.
- Emphasizes and encourages job creation.

What does House Bill 2170 do?

- Establishes three basic tax credits.
  - *Credit for Creating New Jobs*
  - *Credit for Investing in Business Property*
  - *Credit for Investing in Real Property in Disadvantaged Rural Counties*

- Offers enhanced credits in disadvantaged and rural counties. Maintains credits for recruiting business in urban counties.

Job Creation Tax Credit		
Tier Level	**Minimum Jobs**	**Credit per Job**
Tier 1	5	$12,500
Tier 2	10	$5,000
Tier 3	15	$750

Business Property Investment Tax Credit		
Tier Level	**Minimum Investment Threshold**	**Amount of Credit as % of M&E**
Tier 1	$0	7%
Tier 2	$1,000,000	5%
Tier 3	$2,000,000	3.5%

Real Property Investment Tax Credit			
Tier Level	**Minimum Investment Threshold**	**New Jobs**	**Amount of Credit as % of Investment**
Tier 1	$10 million	200	30%

- Makes credits available to more businesses in all tiers.

  Manufacturing ♦ Warehousing & Distribution ♦ Wholesale Trade ♦ Corporate Headquarters ♦ Research Facilities ♦ Aircraft Maintenance & Air Courier Services ♦ Computer Technology & Information Processing ♦ Call Centers & Mail Houses ♦ Motorsports Teams & Tracks

- Modifies the wage test to make it fairer.

  - Wage test would be 90% of county average or 110% of state average (whichever is lower) for Tiers 2 & 3.
  - Tier 1 counties do not have to meet wage test.
  - Wage test in development zones ("UP Zones") is 90% of the county average or the state average, whichever is lower.

- Makes credits simpler for businesses to qualify for.

  - Credits would be available based on primary business at each establishment. Primary business of the taxpayer would no longer be an issue.
    - *E.g.*, All manufacturing facilities would be eligible – not just manufacturing facilities owned by taxpayers whose primary business happens to be eligible for credits.
  - A better system for economic developers and simpler and fairer to businesses.

- Changes tier structure from five tiers to three.

  - Makes tiers more stable and counties less subject to arbitrary annual shifts.

Tier 1	Bottom 40 counties	Most Distressed
Tier 2	Middle 40 counties	Moderately Distressed
Tier 3	Top 20 counties	Least Distressed

  - New formula produces better measure of distress.
  - More counties qualify as distressed.

- Redesigns Development Zones to create Urban Progress ("UP") Zones.

  - These changes address concerns that the current zones do not target urban poverty areas.
  - Zones would be smaller and more focused.
  - Businesses in UP Zones get additional $1,000 job credit plus an additional $2000 for hiring an UP Zone resident or long-term unemployed worker. Job threshold is same as Tier 1.
  - Business property credit has same threshold and percentage as Tier 1.

- Maintains traditional Lee Act safeguards.

  - Limits credits to 50% of tax liability.
  - Requires wage test & health insurance.
  - Continues DENR, OSHA & DOR tax debt tests.
  - Credit installments expire if jobs or investment not sustained.
  - Forfeited credits may be clawed back.
  - Six months statute of limitations for late filing of credits.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☐ Committee Substitute for

HB 2170 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.

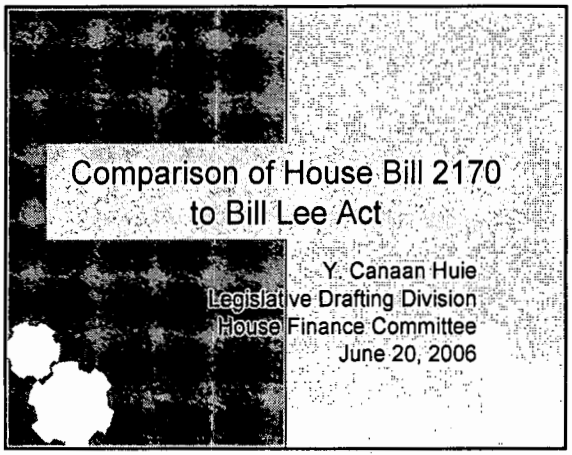
☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill, and recommendation that the committee substitute bill be re-referred to the Committee on APPROPRIATIONS.

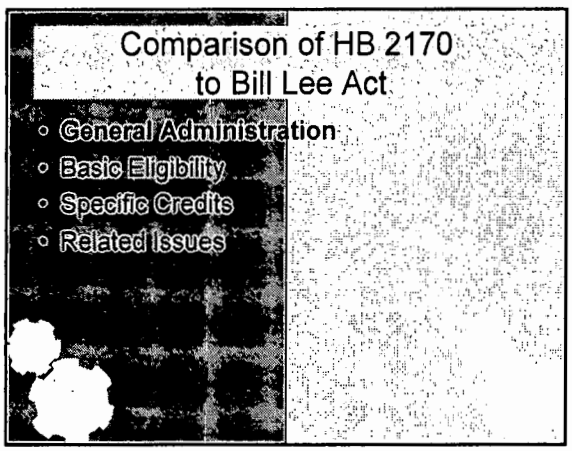
(FOR JOURNAL USE ONLY)

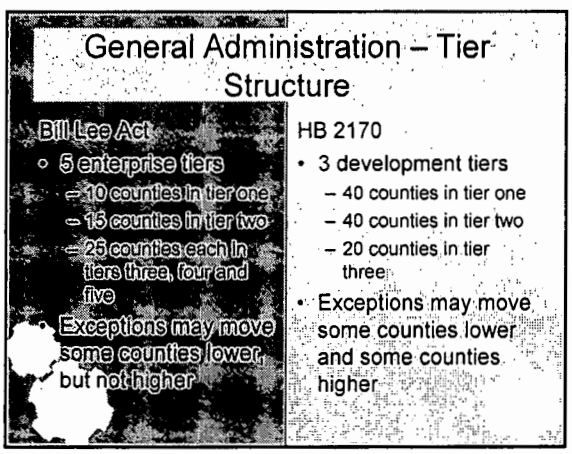
_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.


Comparison of House Bill 2170 to Bill Lee Act
Y. Canaan Huie
Legislative Drafting Division
House Finance Committee
June 20, 2006


Comparison of HB 2170 to Bill Lee Act
General Administration
Basic Eligibility
Specific Credits
Related Issues


General Administration – Tier Structure
Bill Lee Act
5 enterprise tiers
10 counties in tier one
15 counties in tier two
25 counties each in tiers three, four and five
Exceptions may move some counties lower, but not higher
HB 2170
3 development tiers
40 counties in tier one
40 counties in tier two
20 counties in tier three
Exceptions may move some counties lower and some counties higher

General Administration – Tier Structure

Bill Lee Act

- 3 factors determine initial ranking – unemployment, per capita income, population growth
- Adjustments based on tier one or two status, population level, unemployment level, and multi-county parks

HB 2170

- 4 factors determine initial ranking – unemployment, median household income, population growth, and assessed property value per capita
- Same adjustments as under Bill Lee Act except for high unemployment

General Administration – Tier Structure

Bill Lee Act

- Population figures include prisoners

HB 2170

- Population figures do not include prisoners

General Administration – Urban Progress Zones

Bill Lee Act

- Development zones meet these conditions
  - At least partly within a city of 5,000 or more
  - Zone population of at least 1,000
  - 20% of zone population is below poverty level
  - Every census tract in zone meets certain poverty guidelines
  - Area may be in one zone

HB 2170

- Urban progress (UP) zones meet these conditions
  - Wholly with a city of 10,000 or more
  - Each tract must meet poverty or industrial requirements
  - Nonresidential tracts no more than 35% of zone
  - Zones no more than 15% of municipality

General Administration

Bill Lee Act

- Credit is taken against one of income, franchise, or gross premiums tax
- Credit may not exceed 50% of tax liability
- Carryforward period ranges from 5 years to 20 years

HB 2170

- Credit is taken against income, franchise, and gross premiums taxes
- Credit may not exceed 50% of combined tax liability
- Carryforward period ranges from 5 years to 20 years

Comparison of HB 2170 to Bill Lee Act

- General Administration
- Basic Eligibility
- Specific Credits
- Related Issues

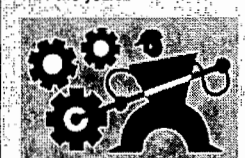
Basic Eligibility – Industry Type

Bill Lee Act

- Eligibility depended on a combination of factors including:
  - Primary activity of a taxpayer as a whole
  - Primary activity of the specific establishment
  - Enterprise tier designation of the establishment
  - Number of new jobs created

HB 2170

- Eligibility depends on the primary activity of the specific establishment
- However, company HQs must create 75 jobs over two years



Basic Eligibility – Industry Type

Bill Lee Act

- Air courier services
- Central office or aircraft facility
- Computer services
- Customer service center
- Data processing
- Electronic mail order house
- Manufacturing
- Warehousing
- Wholesale trade

HB 2170

- Aircraft maintenance and repair is established as a separate category
- Central administrative office is changed to company headquarters
- Data processing and computer services combined as information technology and services
- Motorsports racing team and motorsports racing facilities added
- Research and development added

Basic Eligibility – Quality Jobs

Both Bill Lee Act and HB 2170 have the following requirements

- Provision of Health Insurance
- OSHA Record
- Environmental Record
- No Overdue Tax Debts

Basic Eligibility – Wage Standard

Bill Lee Act

- No wage standard in tiers one and two and development zones
- Wage standard equal to 110% of the lesser of
  - County wage
  - State wage
  - County wage adjusted by the wage/income factor

HB 2170

- No wage standard in tier one
- Wage standard in UP zone is 90% of the lower of State and county wage
- Wage standard equal to the lesser of
  - 110% of the State wage
  - 90% of the county wage

Comparison of HB 2170 to Bill Lee Act

- General Administration
- Basic Eligibility
- Specific Credits
- Related Issues

Specific Credits

Bill Lee Act
- Creating jobs
- Investing in M&E
- Technology commercialization
- Research & development
- Worker training
- Central office or aircraft facility property
- Other real property
- Development zone projects

HB 2170
- Creating jobs
- Investing in business property
- Investing in real property
- Note: R&D was recodified in 2004

Specific Credits – Creating Jobs – Bill Lee Act

- Must have 5 full-time employees and create a new job
- Credit ranges from $500 to $16,500 depending on enterprise tier and development zone
- Taken over 4 years

Specific Credits – Creating Jobs – HB 2170

- Taxpayer must meet a threshold before becoming eligible for the credit
  - 5 new jobs in tier one
  - 10 new jobs in tier two
  - 15 new jobs in tier three
- Credit taken over 4 years
- Jobs transferred from a related member not included
- Credit varies depending on tier and UP zone
  - $12,500 per job in tier one
  - $5,000 per job in tier two
  - $750 per job in tier three
  - Additional $1,000 for UP zone
  - Additional $2,000 for hiring a zone resident or long-term unemployed worker in an UP zone.

Specific Credits – Investing in M&E – Bill Lee Act

- Credit taken in seven installments
- Credit amount varies depending on enterprise tier level
  - 7% in tiers one and two
  - 6% in tier three
  - 5% in tier four
  - 4% in tier five
- M&E definition narrowly drawn
- Credit is based on the eligible investment amount above a threshold
  - $0 in tier one
  - $100,000 in tier two
  - $200,000 in tier three
  - $1,000,000 in tier four
  - $2,000,000 in tier five

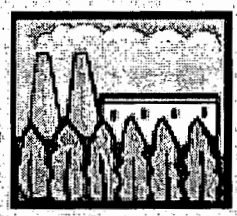
Specific Credits – Investing in Business Property – HB 2170

- Credit taken in four installments
- Credit amount varies depending on development tier level
  - 7% in tier one
  - 5% in tier two
  - 3.5% in tier three
- Business property definition broadly drawn
- Credit is based on the eligible investment amount above a threshold
  - $0 in tier one
  - $1,000,000 in tier two
  - $2,000,000 in tier three

Specific Credits – Investing in Real Property

Bill Lee Act and HB 2170

- Require activity in lower-tiered area
- Require 200 new jobs and $10 million investment
- Credit equal to 30% of eligible investment amount
- Credit taken over 7 years
- Different carryforwards
  - 20 years under Bill Lee Act
  - 15 years under HB 2170



Comparison of HB 2170 to Bill Lee Act

- General Administration
- Basic Eligibility
- Specific Credits
- **Related Issues**

Related Issues

- Numerous programs currently use the Bill Lee Act tier structure as an indicator of poverty or economic distress
- Some of the programs are economic development-related, but others touch on areas such as agricultural easements, clean water, unsafe buildings, and animal control

Related Issues

- A confusing system is set up when you have two sets of tiers that are applicable to different, but often closely related, programs
- However, current references to enterprise tiers can not always be easily translated to development tiers

Related Issues – Four Approaches

- Change the reference to roughly equivalent development tiers.
  - Payment in lieu of taxes for wetlands mitigation
- Change the reference to less restrictive development tiers
  - Sales tax refund on machinery
  - Tax increment financing
- Change the reference to more restrictive development tiers
  - R&D credit
  - Building materials sales tax refund
  - Spay/Neuter Account
  - Agricultural easements
  - JDIG
- Change the reference in another manner
  - CDBG
  - IDF
  - JDIG

Related Issues – Extension of Bill Lee Act

- Some companies now in the process of site selection
- These companies would have the option of locking in the credits under the Bill Lee Act for one year
- Does not affect previously enacted extensions of the Bill Lee Act for certain types of taxpayers

The Bottom Line
Pros and Cons for the Different Areas

- As a general rule, current enterprise tier one and two areas will become development tier one areas, current enterprise tier three and four areas will become development tier two areas, and current enterprise tier five areas will become development tier three areas
- This general rule does not hold for about 10-15 counties - the majority of those counties have a more advantageous change in tier status
- All areas will tend to benefit from clarity in eligible business and flexibility in taking credits

The Bottom Line
Pros and Cons for the Different Areas

- Current Enterprise Tier One Areas
  - Addition of 5-job threshold for job creation
- Current Enterprise Tier Two Areas
  - Addition of 5-job threshold for job creation
  - Per job credit increases from $4,000 to $12,500
  - Elimination of threshold requirement for investing in business property
  - Benefits from corresponding changes regarding sales tax refunds for machinery and equipment

The Bottom Line
Pros and Cons for the Different Areas

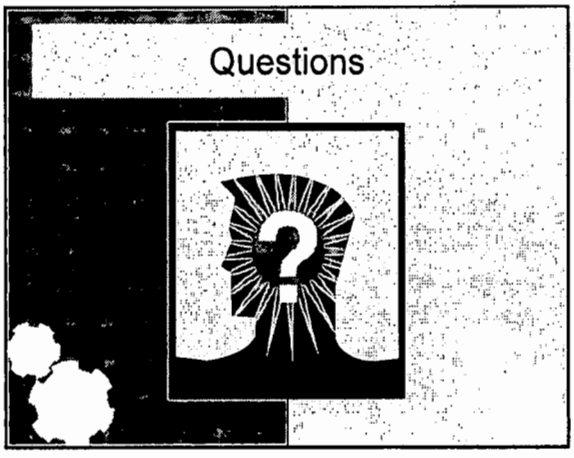
- Current Enterprise Tier Three Areas
  - Area most likely to benefit from changes in the wage standard
  - Addition of 10-job threshold for job creation
  - Per job credit increases from $3,000 to $5,000
  - Business property threshold increases from $200,000 to $1,000,000
  - Business property credit decreases from 6% to 5%
  - Suffers from corresponding changes made to sales tax refunds on building materials, R&D credit, Spay and Neuter Account, agricultural easements, and JDIG

The Bottom Line

Pros and Cons for the Different Areas

- Current Enterprise Tier Four Areas
  - Somewhat likely to benefit from changes in the wage standard
  - Addition of 10-job threshold for job creation
  - Per job credit increases from $1,000 to $5,000
  - Benefits from corresponding changes made to JDIG
- Current Enterprise Tier Five Areas
  - Less likely to benefit from changes in the wage standard
  - Addition of 15-job threshold for job creation
  - Per job credit increases from $500 to $750
  - Business property credit decreases from 4% to 3.5%

Questions



2006 Tier Under New Tax Credit Proposal

Tier 1

County	2006 Tier	2006 New Tier
ALLEGHANY	1	1
ANSON	3	1
BERTIE	1	1
BLADEN	1	1
BURKE	3	1
CALDWELL	1	1
CAMDEN	1	1
CASWELL	1	1
CLAY	1	1
CLEVELAND	2	1
COLUMBUS	2	1
DUPLIN	3	1
EDGECOMBE	1	1
GATES	1	1
GRAHAM	1	1
GRANVILLE	3	1
GREENE	2	1
HALIFAX	1	1
HERTFORD	1	1
HOKE	3	1
HYDE	1	1
JONES	1	1
LENOIR	3	1
MARTIN	1	1
MCDOWELL	2	1
MITCHELL	1	1
MONTGOMERY	2	1
NORTHAMPTON	1	1
PERQUIMANS	1	1
RICHMOND	1	1
ROBESON	2	1
ROCKINGHAM	2	1
RUTHERFORD	1	1
SAMPSON	3	1
SCOTLAND	1	1
SWAIN	1	1
TYRRELL	1	1
VANCE	1	1
WARREN	1	1
WASHINGTON	1	1

Tier 2

County	2006 Tier	2006 New Tier
ALAMANCE	4	2
ALEXANDER	4	2
ASHE	3	2
AVERY	3	2
BEAUFORT	1	2
CATAWBA	4	2
CHEROKEE	3	2
CHOWAN	3	2
CRAVEN	4	2
CUMBERLAND	4	2
CURRITUCK	3	2
DARE	3	2
DAVIDSON	4	2
DAVIE	5	2
GASTON	3	2
HARNETT	4	2
JACKSON	4	2
LINCOLN	4	2
MACON	3	2
MADISON	3	2
NASH	4	2
ONSLOW	5	2
PAMLICO	3	2
PASQUOTANK	3	2
PENDER	4	2
PERSON	3	2
PITT	4	2
POLK	3	2
RANDOLPH	4	2
ROWAN	3	2
STANLY	3	2
STOKES	3	2
SURRY	3	2
TRANSYLVANIA	3	2
WATAUGA	4	2
WAYNE	4	2
WILKES	3	2
WILSON	1	2
YADKIN	4	2
YANCEY	2	2

Tier 3

County	2006 Tier	2006 New Tier
BRUNSWICK	5	3
BUNCOMBE	5	3
CABARRUS	5	3
CARTERET	5	3
CHATHAM	5	3
DURHAM	5	3
FORSYTH	5	3
FRANKLIN	5	3
GUILFORD	4	3
HAYWOOD	5	3
HENDERSON	5	3
IREDELL	5	3
JOHNSTON	5	3
LEE	4	3
MECKLENBURG	5	3
MOORE	5	3
NEW HANOVER	5	3
ORANGE	5	3
UNION	5	3
WAKE	5	3

Note: The list above reflects each county's tier if the proposed new tax credit, HB 1270, had been in place for 2006

ATTACHMENT 13

North Carolina General Assembly

House Committee on Finance

Minutes

~

June 21, 2006

The House Committee on Finance met on Wednesday, June 21, 2006 immediately after session in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Gibson and Luebke; Vice-Chairs Daughtridge, Hill, Ross, Weiss, and Womble; and Representatives Bordsen, Capps, Faison, Folwell, Glazier, Holliman, Jones, Lewis, Lucas, McGee, Rayfield, Underhill, and Walend. Also present were Sergeant-at-Arms Trussant Avent, Will Heath, Fred Hines, and Dusty Rhodes. Staff persons present included Rodney Bizzell, David Crotts, Brenna Erford, Dan Ettefagh, and Canaan Huie. The Visitor Registration Sheets are attached and incorporated into these minutes as **attachment 1**.

Chairman Gibson called the meeting to order at 4:11 pm and recognized the four (4) pages present: (1) Eryn Ruppe of Rutherford County, sponsored by Speaker Black; (2) Lindsay Luckadoo of Rutherford County, sponsored by Representative England; (3) Anna Carr Ivey of New Hanover County, sponsored by Representative McComas; and (4) Jordan Blackwell of Cumberland County, sponsored by Speaker Black.

Chairman Gibson first stated that the Committee would be discussing certain special indebtedness and bond issues. He also announced that a vote on these issues would not be on the calendar for the meeting. Chairman Gibson then recognized Dick Hamilton from the Wildlife Resources Commission to speak about a land purchasing opportunity. Mr. Hamilton stated that the International Paper Company is liquidating most of their land assets and the Wildlife Resources Commission is willing to manage and to help maintain these lands. He continued saying that the timber sales on the land would help to retire the debt over the next 20 years. The total amount of funding needed would be $20 million. Representative Hill then spoke in support for the proposal and urged the Committee members to do likewise.

Following Representative Hill's comments, Chairman Gibson recognized Representative Daughtridge to speak about certificates of participation for improvements to the North Carolina Museum of Art included in a proposed committee substitute to **SB 540 – Special Indebtedness Projects** (see **attachment 2**). He reported that cultural tourism is one of the fastest growing sectors in the North Carolina economy and that cultural tourists stay longer and spend more money than most other tourists. Secretary Lisbeth Evans from the North Carolina Department of Cultural Resources was recognized and said that the previous investments made by the state in the North Carolina Art Museum have been extremely beneficial to the tourism industry in North Carolina. Secretary Evans then encouraged the members of the Committee to support the bill.

Chairman Gibson then recognized Dr. Leah Devlin from the North Carolina State Division of Public Health who spoke about funding for a new state public health lab. She informed the Committee that a new State Public Health Lab was essential in trying to prepare for emergencies that compromise the health and safety of the people of North Carolina. An outline of Dr. Devlin's presentation can be found in **attachment 3**. Chairman Gibson then recognized Canaan Huie of Bill Drafting who spoke about funding for Special Indebtedness Projects for the construction of three psychiatric hospitals in the central, eastern, and western parts of the state. Mr. Huie gave an overview of the three construction proposals (a summary is included in **attachment 2**). Representative Pate was then recognized and reported his experience while visiting one of the psychiatric hospitals and urged the Committee to support the proposal. Chairman Gibson then recognized Representative Folwell who stated that the state has adjustable rates that are paid out to bondholders and these rates will increase as the interest rate increases. Therefore, the debt affordability is lowered as the interest rate increases. Representative Folwell continued saying that North Carolina will be in a continuing budget crisis as the state tries to cover the costs of health care for vested state retirees in the future. He then concluded that the surging cost of the State Health Plan should be taken into account when determining debt affordability.

The Committee then began discussing several bond proposals. Chairman Gibson first recognized Billy Ray Hall from the Rural Center who spoke about the proposed Water and Sewer bonds. Mr. Hall gave a report detailing the success of the previous water and sewer bond package totaling $800 million. He then claimed that the federal government is now giving only 17 cents out of every dollar that is going toward water and sewer systems in North Carolina, which is much less than it was in previous decades. He stated that water sewer systems are badly needed for continued growth and that many of the local governments' first priority is building water and sewer infrastructure. Representative Underhill was recognized and urged the committee to support the proposal.

Chairman Gibson then recognized Representative Lucy Allen who spoke about the Land for Tomorrow Bond proposal. She referred to a handout (see **attachment 4**) prepared by former Director of Fiscal Research Jim Johnson that showed that the state will have less debt in ten years than it does now even if it takes on each of the proposed bond projects that had been discussed. Representative Womble then asked what would happen to the property tax dollars on land that is bought by the state. Kate Dixon, the Director of Land for Tomorrow, was recognized and said that the buying of state land would be an investment in communities across the state, especially since tourism is a vital industry in North Carolina. Representative Underhill then voiced her concerns about the state buying land and reducing the tax base of North Carolina counties. Ms. Dixon noted in response that some funds were available through trust funds to reimburse localities for the loss of property tax revenues as a result of land acquisition by the State. Chairman Gibson then recognized Jim Johnson, representing Land for Tomorrow, who explained debt affordability in more detail. He reported that purchasing land actually has an effect of improving debt affordability because it increases the state's assets.

Following Mr. Johnson's remarks, Representative Ross was recognized to explain the $250 million affordable housing bond proposal (see **attachment 5** for an overview of the proposal). Representative Ross stated that the proposal is for $50 million to be added to the Housing Trust Fund each year for the next five years. Following the overview, Bob Kukab, Director of the State Housing and Finance Agency, explained how investing in the housing trust fund will increase economic development across the state. Mr. Kukab then urged the committee to support the proposal.

Having no further business before the Committee, Chairman Gibson then adjourned the meeting at 5:33 pm.

Respectfully submitted,

Representative Pryor Gibson
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:

1. Visitor Registration Sheets
2. Senate Bill 540 (and related materials)
3. PowerPoint presentation on new State Public Health Lab Proposal
4. Land For Tomorrow Debt Affordability Memorandum (and related materials)
5. Affordable Housing Bond Proposal Overview

ATTACHMENT 1

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 21, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Heather Crothers	TNC
Ed K Rider	CWMTF
Emily Kirby	NC Conservation Network
Marge Anders Linker	Land for Tomorrow.
Leah Devlin	DHHS.
Erin Kinney	NC Conservation Network
Jennifer Wimmer	OSBM
Chris Hardee	OSBM
Jim LORA	OSBM
Kent Yelverton	NCDA+CS
David McLeod	NCDA+CS

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 21, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jim Stegall	U.C.P.S.
Libba Evans	DCF
Donna Rosfeld	DCF
Wendy Kelly	HMW
Lee Hedgepeth	KCCH
Stan Woodson	Fam Bureau
Nick Slater	TNT
Will Slater	L4T
Mark Lanier	UNCW
Stephanie Dorko	Charlotte Chamber
Mary Thomas	RBIC

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 21, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
LISA RIEGEL	NHTF
Mike Wa	NCRPA
LEWIS LEDFORD	DENR, PARKS
Ben Holmes	CHNTF
Katherine Skinner	The Nature Conservancy
Edgar Mills	CTNC
Terry Chen	CTNC
Kathryn Sawyer	ACEC/NC
Klyph Jordan	Eno River Association
Anna Treadway	Eno River Association
Robin Jacobs	Eno River Association

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 21, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Paul Meyer	NCACC
Anita Watkins	NCLM
Chris Fitzsimon	NC Policy Watch
DAVID WRIGHT	ENVIRONMENT NORTH CAROLINA
Kristin Iguskay	Environment North Carolina
Elizabeth Quats	Environment North Carolina
Elizabeth Self	NC Sierra Club
Dick Hamilton	NCWRC
Gordon Myers	NC WRC
Billy Ray Hall	NC Rural Center
Burt McKee	NC Rural Center
Bill Wilson	AARP

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 21, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kelly Calabria	Capstrat
Chris Estes	NC Housing Coalition
BARBARA GOODMON	AJ Fletcher FOUNDATION
B KUCAB	NCHTA
Angie Hair	Maupin Taylor
Glen W Mercer	NCM Assoc
Catherine Woodson	NCMA
FRANK W. FOLGER	Helms Mullis Wicker - NCMA

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 540

Finance Committee Substitute Adopted 3/30/05

PROPOSED HOUSE COMMITTEE SUBSTITUTE S540-CSLYx-87 [v.1]

6/21/2006 1:55:20 PM

Short Title: Special Indebtedness Projects. (Public)

Sponsors:

Referred to:

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE ISSUANCE OF SPECIAL INDEBTEDNESS TO FINANCE THE CAPITAL FACILITIES COSTS OF AN EXPANSION AND RENOVATION OF THE MUSEUM OF ART, OF THE COMPLETION OF A NEW CENTRAL REGIONAL PSYCHIATRIC HOSPITAL, OF THE CONSTRUCTION OF NEW EASTERN AND WESTERN REGIONAL PSYCHIATRIC HOSPITALS, AND OF A NEW PUBLIC HEALTH LABORATORY AND CHIEF MEDICAL EXAMINER'S OFFICE.

The General Assembly of North Carolina enacts:

SECTION 1. In accordance with G.S. 142-83, this section authorizes the issuance or incurrence of special indebtedness in the maximum aggregate principal amount of forty million dollars ($40,000,000) to finance the costs of constructing new buildings and pavilions and renovating existing buildings at the North Carolina Museum of Art. The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the costs of constructing and renovating the project described in this section.

SECTION 2. In accordance with G.S. 142-83, this section authorizes the issuance or incurrence of special indebtedness in the maximum aggregate principal amount of twenty million dollars ($20,000,000) to finance the capital facility costs of completing the Central Regional Psychiatric Hospital for the Department of Health and Human Services. The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the capital facility costs of the project described in this section.

SECTION 3. In accordance with G.S. 142-83, this section authorizes the issuance or incurrence of special indebtedness in the maximum aggregate principal amount of one hundred one million dollars ($101,000,000) to finance the capital facility costs of the Department of Health and Human Services Public Health Laboratory and Office of Chief Medical Examiner. The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the capital facility costs of the project described in this section.

SECTION 4. In accordance with G.S. 142-83, this section authorizes the issuance or incurrence of special indebtedness in the maximum aggregate principal amount of one hundred forty-five million five hundred thousand dollars ($145,500,000) to finance the capital facility costs of the Eastern Regional Psychiatric Hospital for the Department of Health and Human Services. The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the capital facility costs of the project described in this section.

SECTION 5. In accordance with G.S. 142-83, this section authorizes the issuance or incurrence of special indebtedness in the maximum aggregate principal amount of one hundred sixty-two million eight hundred thousand dollars ($162,800,000) to finance the capital facility costs of the Western Regional Psychiatric Hospital for the Department of Health and Human Services. The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the capital facility costs of the project described in this section.

SECTION 6. This act is effective when it becomes law.

SENATE BILL 540:
Special Indebtedness Projects

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 21, 2006
Introduced by:	Sen. Clodfelter	**Summary by:**	Canaan Huie
Version:	PCS to Second Edition S540-CSLYx-87		Committee Counsel

SUMMARY: ***This bill would authorize the State to issue or incur special indebtedness for five projects – the Museum of Art Expansion, a new Public Health Laboratory and Office of the Chief Medical Examiner facility, completion of the Central Regional Psychiatric Hospital, and construction of the Eastern Regional and Western Regional Psychiatric Hospitals. The total amount of special indebtedness authorized by this bill is $469,300,000. This bill would be effective when it became law.***

CURRENT LAW: Commonly referred to as "certificates of participation," special indebtedness is nonvoted debt that is typically secured only by an interest in State property being acquired or improved. The term "special indebtedness" covers the various forms this type of debt can take: installment purchase (with or without certificates of participation), lease-purchase (with or without certificates of participation), and bonds.

The particular form of special indebtedness to be used for a given project will depend on its size, the nature of the property and the improvement, and other circumstances. Based on these circumstances, one form or another of special indebtedness may be the least expensive and most practical for the State to utilize. Article 9 of Chapter 142 of the General Statutes prohibits the issuance of special indebtedness except for projects specifically authorized by the General Assembly.

Before any type of special indebtedness may be issued or incurred, the State Treasurer must certify that debt financing may be desirable for a specific project presented to it by the Department of Administration. Next, the Council of State must give preliminary approval. If preliminary approval is obtained, the Council of State must give final approval, setting out details such as the maximum amount to be financed, the maximum maturity, and the maximum interest rates. The maximum maturity may not exceed 40 years. The State Treasurer must approve the details of the financing, finding that the amount to be borrowed is adequate and not excessive and will not require an excessive increase in any State revenues to provide for repayment, and that the special indebtedness can be incurred or issued on terms favorable to the State. Finally, the State Treasurer must report to the Joint Legislative Commission on Governmental Operations at least five days before any special indebtedness is issued or incurred.

BILL ANALYSIS: This bill would authorize the issuance or incurrence of special indebtedness for the following projects in the following amounts:

Project	Amount
Museum of Art	$40,000,000
Public Health Lab	$101,000,000
Central Regional Psychiatric Hospital	$20,000,000
Eastern Regional Psychiatric Hospital	$145,500,000
Western Regional Psychiatric Hospital	$162,800,000

EFFECTIVE DATE: This bill would be effective when it became law.

BACKGROUND: Over the last six years, the North Carolina Museum of Art has developed a plan for a museum campus. The plan preserves and reuses the existing museum building as a center for education, arts services, and administration, and as a venue for large-scale exhibitions of international stature. The projected total cost of building the new gallery pavilions and renovating the existing building is $75 million. To date, the State has allocated $6 million from Repair and Renovation funds toward the renovation of the existing building and appropriated $10 million in the 2005 budget to begin the work. The City of Raleigh and Wake County approved $15 million in interlocal funds last year for the art museum expansion project. The Art Museum Boards have agreed to raise $50 million to endow operations as their part in the public-private effort to build and sustain the institution.

The State Public Health Laboratory serves as the lead laboratory in North Carolina for the National Laboratory Response Network coordinated by the Centers for Disease Control and Prevention. The lab has primary responsibility in the State for conducting bioterrorism testing and chemical testing and contains a high-level (BSL-3) containment lab. The Office of the Chief Medical Examiner has responsibilities relating to autopsy confirmation, toxicology, and law enforcement. The Bath Building in downtown Raleigh currently houses these facilities. The building was built in the early 70's and does not have proper anti-terrorism protections or even adequate space, HVAC systems, or electrical power. The new facility would address the issues associated with space, security, safety, ventilation, and power supply. The new facility would total over 204,000 square feet and would be located on the campus of the NC State Veterinary School.

In 2003, the General Assembly authorized special indebtedness for the construction of a new psychiatric hospital in Butner to replace John Umstead Hospital in Butner and Dorothea Dix Hospital in Raleigh. That act authorized special indebtedness in the amount of $110 million for the new hospital. The funds authorized in 2003 have proved not to be sufficient for completion of the construction of the hospital. This bill would authorize an additional $20 million of special indebtedness for the completion of that facility.

Cherry Hospital in Goldsboro is the State psychiatric hospital for the eastern part of the State. The facility was originally constructed in 1880. Newer buildings were added to the campus in 1939, 1951 and 1962. During the 2004-05 fiscal year, Cherry Hospital served over 4,800 people. The existing Cherry Hospital would be replaced by a new facility to be located in the same area. The new hospital will be 374,300 square feet and accommodate 304 in-patient beds.

Broughton Hospital in Morganton is the State psychiatric for the western part of the State. The original facility, which still serves as the primary in-patient building, was constructed in 1882. The newest buildings on the campus were added in the 1950's. During the 2004-05 fiscal year, Broughton Hospital served over 4,000 people. The existing Broughton Hospital would be replaced by a new facility to be located in the same area. The new hospital will be 419,300 square feet and accommodate 382 in-patient beds.

S0540e2-SMLY-CSLYx-87

Critical Preparedness Infrastructure

New State PH Laboratory and OCME Facility Report

Key Role for SLPH: PREPAREDNESS

- Since 2001, serves as the NC lead laboratory for National Laboratory Response Network (LRN) for CDC
- Conduct Bioterrorism testing-anthrax crisis, ricin, postal service testing, white powder testing
- Conducts Chemical terrorism testing
- High level containment laboratory (BSL-3)

Key Role for the Medical Examiner: PREPAREDNESS

- Autopsy Confirmation
- Toxicology
- Mass Casualties
- Federal Team Support Logistics
- Law Enforcement

Governor's Budget Recommendation

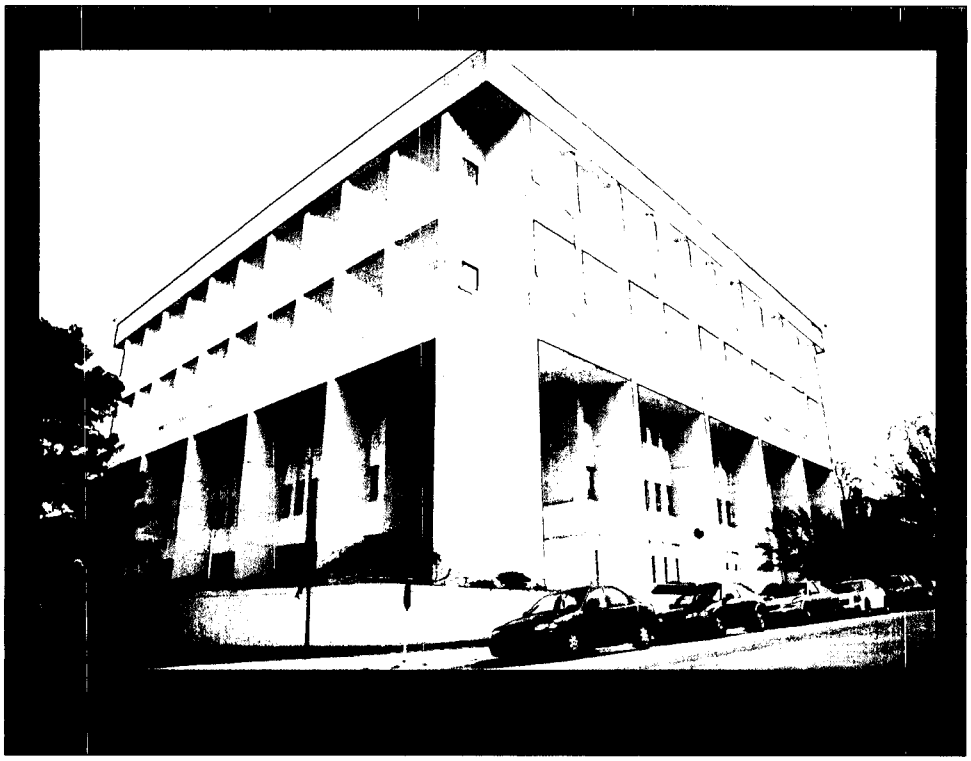
- Pursue design and construction of a new co-located SLPH and OCME facility to replace aging and inadequate facilities.
- $101,000,000
- Based on Updated Feasibility Study 2004

Letter of Support

- Carmen Hooker Odom, Secretary - NC Dept. of Health and Human Services
- Bryan Beatty, Secretary - NC Dept. of Crime Control and Public Safety
- Steve Troxler, Commissioner - NC Dept. of Agriculture and Consumer Services
- Warwick Arden, Dean - NCSU College of Veterinary Medicine

NC State Lab of Public Health

- Bath Building – designed/built early 70's
- Occupied – 1973, included much of DPH
- 75% of Lab work manual; approx. 28% of current workload (1.6 M exams)
- Renovated 1988-89; approx. 95,000 sq.ft.
- Current HVAC inadequate-must keep labs neg. pressure to halls; electrical power unstable and completely inadequate; lack of building security (perimeter)



State Lab Services

- Cancer Cytology (Pap tests)
- Microbiology (identifies pathogenic bacteria, viruses, parasites, foodborne pathogens)
- Newborn Screening/Clinical Chemistry
- Virology/Serology (including rabies)
- Environmental Sciences (includes drinking water testing; environmental contaminants)
- Laboratory Improvement (provides continuing education for labs across the state)

Materials handled by State Lab

Hazardous biological materials that often contain pathogens such as viruses, bacteria, fungi:

- Fecal and urine samples
- Tissue samples
- Blood samples
- Animal heads (rabies); insects & birds (arboviruses)

Hazardous chemicals

Low-level radioactive materials

Suspected bioterrorism samples (e.g., anthrax)

NC SLPH

- 1,000,000 specimens/samples received each year
- Over 6,000,000 test results generated each year
- Train over 2000 laboratorians/HCP each year

Office of Chief Medical Examiner

- Facility built in early 1970's
- Space inadequate – autopsy, morgue, laboratory
- Parking for transport vehicles inadequate
- Access to building inadequate
- Cannot support Mass Fatality situation

Office of the Chief Medical Examiner (continued)

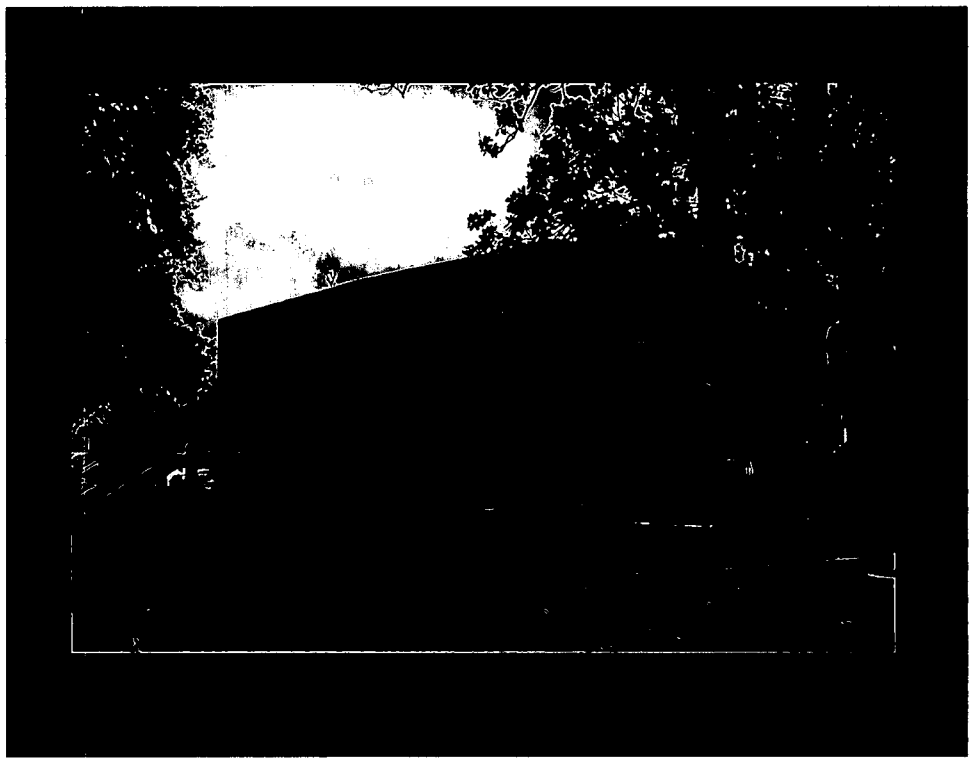
- 1500 autopsies/year – tripled since 1972
- Toxicology tests have doubled since 1999 (quadrupled since 1972) – conduct for all Mes
- Space for Forensic records at capacity

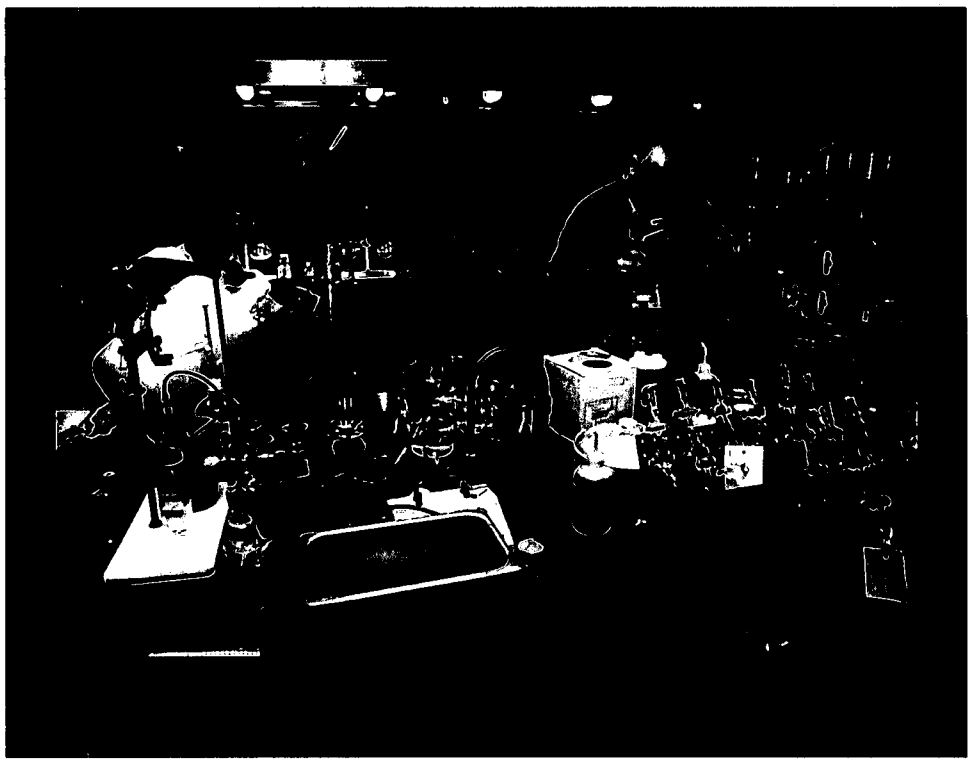
Limitations of today's State Public Health Lab

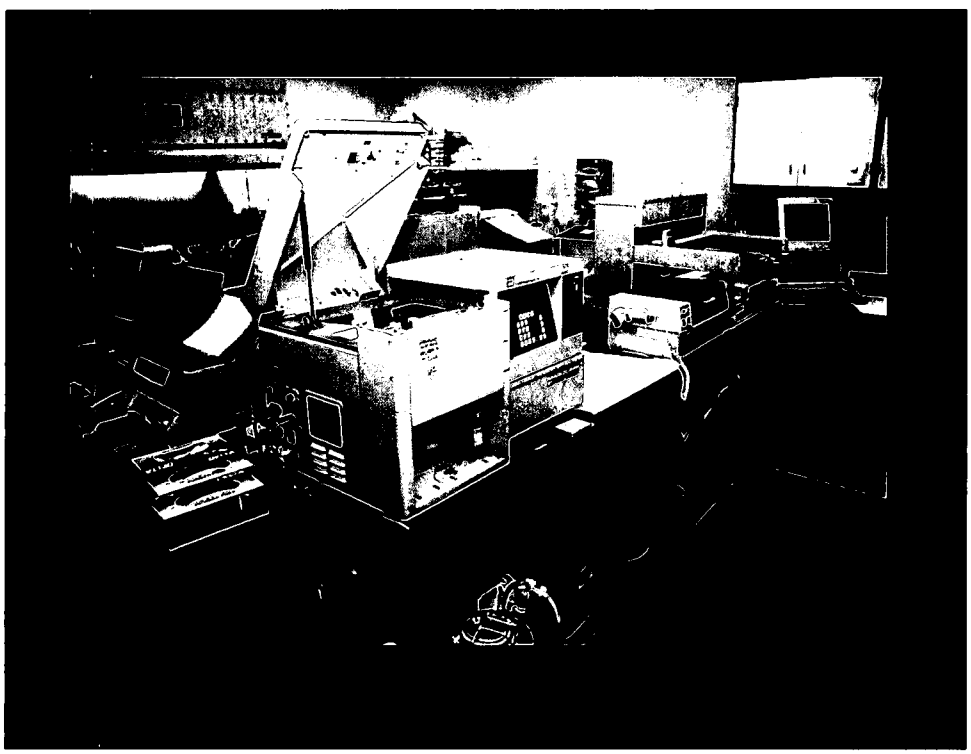
- *Security*
- *Physical space*
- *Safety issues*
- *Electrical power*
- *Ventilation*
- *Efficiency*

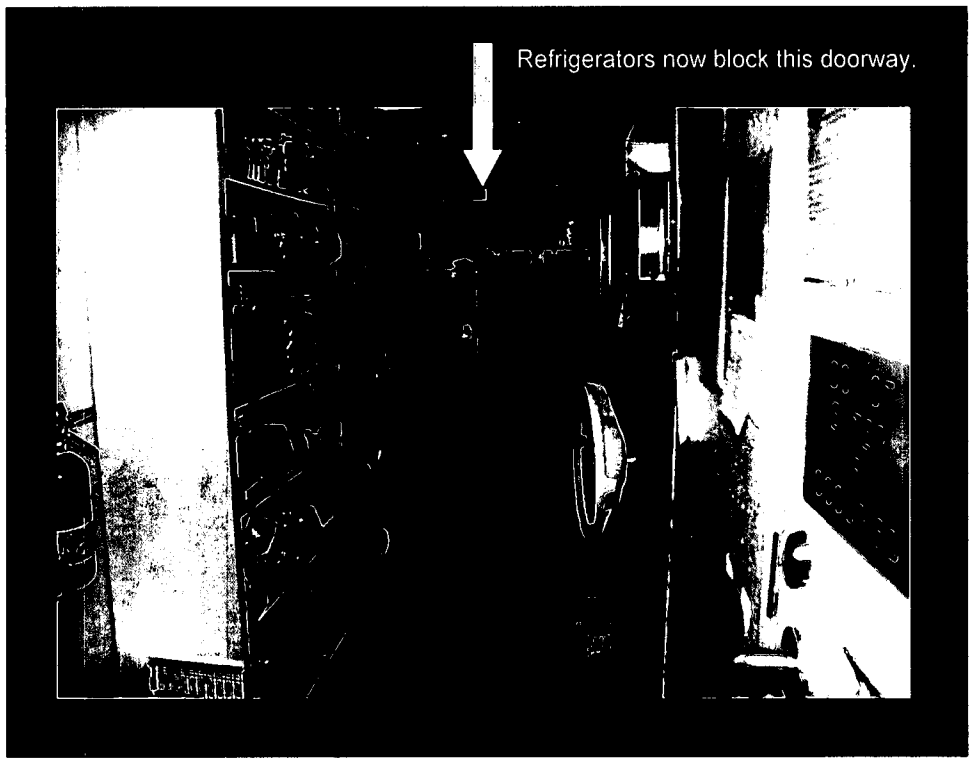
Security

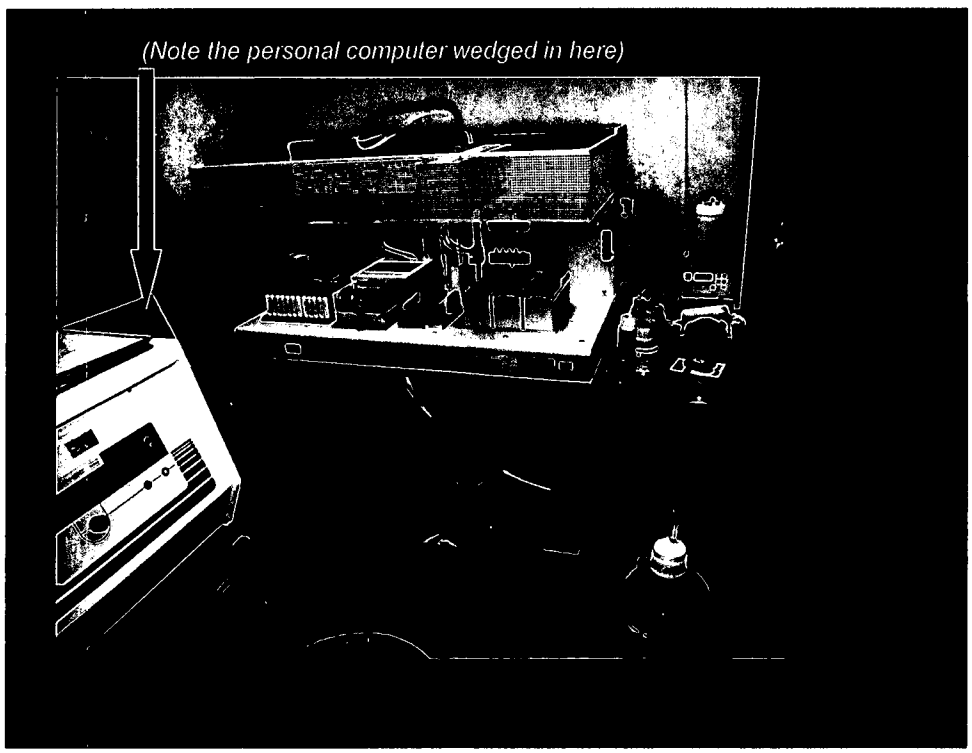
- The loading dock area under building is open; access is not controlled or limited—anyone can drive anything under the building.
- There is no controlled perimeter around the building and no security gate or controlled access.
- Movement through the building of materials/samples








Refrigerators now block this doorway.


(Note the personal computer wedged in here)

Safety issues

- Labs lack windows to observe workers
- Emergency exiting is hazardous: convoluted floor plan; poor emergency lighting.
- Tight work areas, maze of small rooms, and narrow hallways crowded with supplies and equipment pose safety concerns.

Safety issues, cont.

- Maze-like halls and strung-together rooms make emergency exits and equipment (including fire extinguishers) hard to spot.
- There are few easily accessed up-to-date eyewash stations or emergency showers in case of chemical or biohazard spills/splashes on lab workers.
- Elevators are unreliable.

Electrical power problems

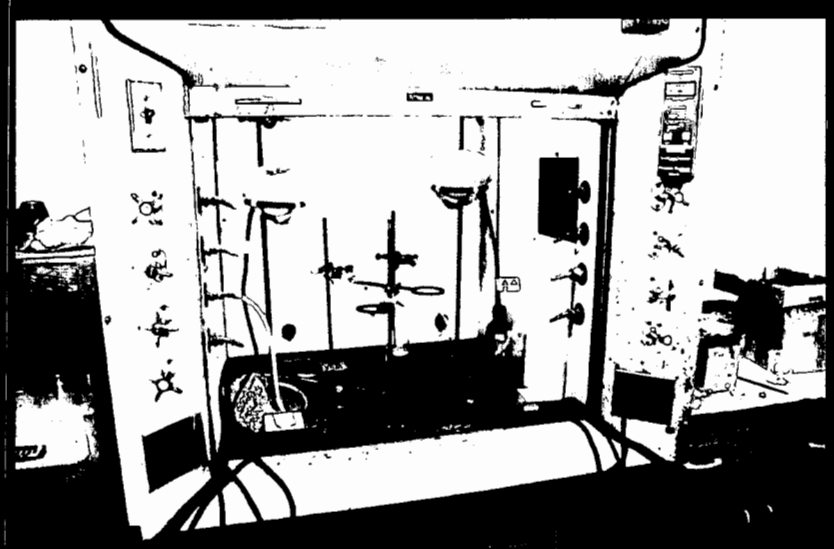
- Electricity is insufficient and unreliable (power outages, surges, brownouts).
- Wiring is inadequate to support power needs.
- Emergency backup power sources are inadequate.
- Lighting is poor in most work areas.

Stinky stuff! Cooker emits ammonium hydroxide fumes.

Electrical power is insufficient to run all needed exhaust hoods and cookers at the same time.

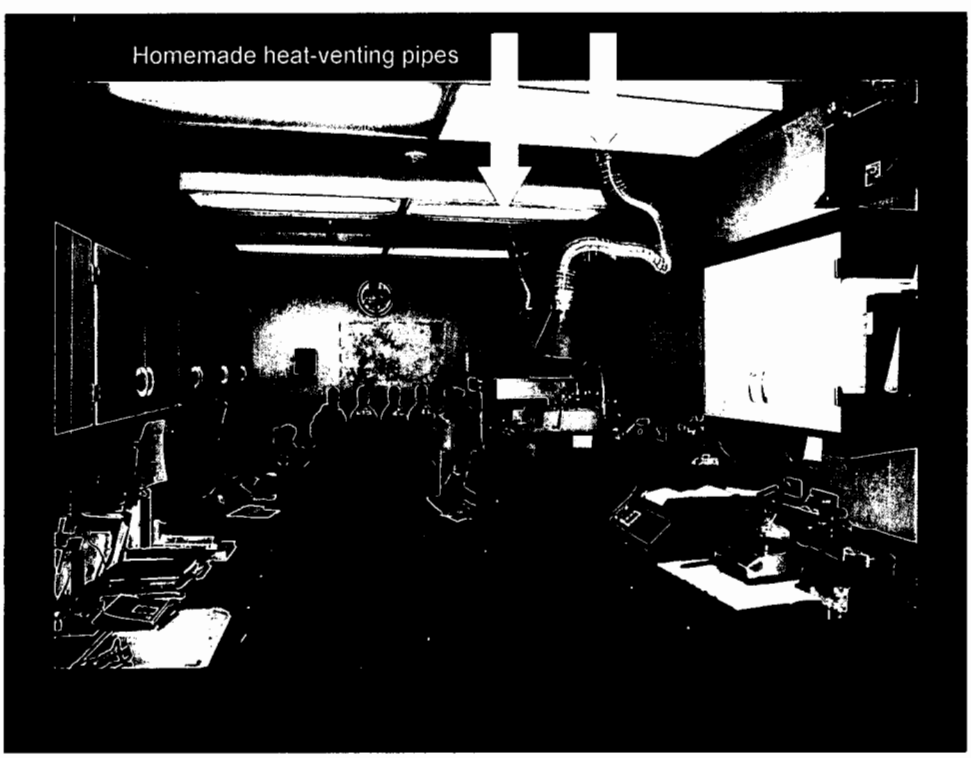
Ventilation limitations

- Climate control system cannot maintain appropriate temperatures for high-tech equipment.
- Air-handling controls are inadequate. Many lab rooms cannot maintain negative air pressure relative to halls—a potential safety hazard (air should flow from halls into labs, not from labs into halls).



30- and 40-year old hoods and their controls are corroded from chemical exposures; features and capacity are inadequate for current workload.

Two large floor fans help airflow.


Homemade heat-venting pipes

Efficiency

- Testing procedures must be spread out over several rooms, as spaces are too small for the necessary equipment, supplies and staff.
- Support staff for labs are located on different floors.
- Power supplies are not sufficient to run all needed equipment at the same time.

New PH Labs Constructed

Labs constructed in the past 8 years:

- **Colorado** (1997)
- **Alaska** (2000)
- **Georgia** (2000)
- **California** (2003)
- **Virginia** (2003)
- **Texas** (2003)
- **Arizona** (2004)

New PH Labs in the Works

- **Ohio;**
- **Arkansas** – broke ground 2004;
- **Minnesota**- broke ground 2004;
- **Missouri** (estimated completion, Fall 2006);
- **Oregon** (2006);
- **Indiana** (estimated completion, November 2006);
- **Illinois-** central lab addition (Springfield);
- **Florida** – Jacksonville;
- **Connecticut** - 2009;
- **New Mexico;**
- **Georgia** (Branch lab in Waycross)

New PH Labs Under Discussion

- **New Jersey**
- **Iowa**
- **North Carolina**
- **Mississippi**
- **Louisiana (before and now after Katrina)**

New SLPH/OCME facility

- Feasibility study
  - (Paid with CDC BT Grant funds)
- RFP-2003; CUH2A selected (vast experience with other SLPH designs/constructions)
- On-site study - April-July, 2004
- Approx. 127,000 sq. ft. for SLPH's existing and proposed needs; includes OCME

NC Preparedness and Response Critical Infrastructure

Public Health Lab

Medical Examiners Office

Questions?

ATTACHMENT 4

James D. Johnson
525 North Bloodworth Street
Raleigh, North Carolina 27604

MEMORANDUM

To: Land for Tomorrow Steering Committee
From: Jim Johnson
Subject: Why the State Can Afford Land for Tomorrow Bonds
Date: June 12, 2006

On the important question for Land for Tomorrow, "Can North Carolina afford a $1 billion Land and Water bond?" the answer is simply, yes.

Over many years with the General Assembly's fiscal staff, I have spent considerable time analyzing the various models used to simulate the impact of the issuance of bonds on the State's budget. After examining these models in relation to the Land for Tomorrow's proposal, my conclusions as to why this is both prudent and affordable can be summarized by the following:

- North Carolina bonds are rated AAA, the highest available. North Carolina maintains its AAA rating by using conservative assumptions to forecast the amount of debt that can be issued, and then by quickly paying off that debt when the voters decide the State should borrow money.

- This is a very prudent and conservative approach to managing the State's debt, and has been a hallmark of the State for decades. The result is lower interest rates when a decision is made to issue debt.

- Using the Treasurer's 2006 assumptions North Carolina has at least $2.1 billion in available debt capacity over the next 10 years. In that same 10-year period the State will retire over $3.37 billion in outstanding debt.

- With continued growth in the North Carolina economy, additional debt capacity should become available in future years to allow the State to meet other priorities in education, health, and transportation infrastructure.

- Using these same conservative assumptions, if the voters approve $1 billion for Land for Tomorrow, $1 billion in Clean Water bonds, and the General Assembly votes to use of certificates of participation for certain time sensitive projects in the areas of mental health, public health, and corrections, the State will still have less debt at the end of ten years than it has today.

The time is right to use voter approved bonds to purchase land that will become an appreciating asset to the State, and with the pressure of development in our rural areas will not be available tomorrow.

Land *for* Tomorrow

A *partnership* of North Carolinians asking the NC Legislature to:

Put $1 billion Land and Water Conservation Bonds on the ballot in November 2006

Places That Matter

- Rivers, Wetlands, Floodplains and Coastal Waters
- Working Farms and Forests
- State and Local Parks and Trails
- Game Lands and Other Natural Areas
- Historic Places
- Land Visible from Scenic Highways

Five-Year Protection Goals

- 740,000 acres of land across North Carolina

including

- Protect water in 6,000 miles of rivers and streams

plus

- Build trails and facilities for state and local parks

plus

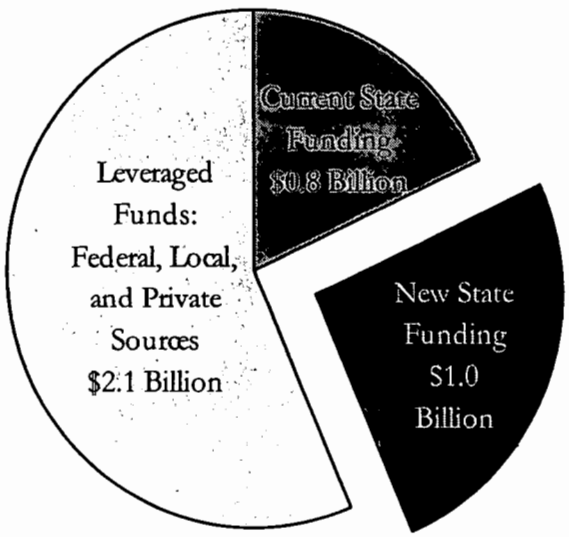
- Restore 350 historic landmarks in public use

plus

- Invest in job creation and community development activities that conserve land and historic places

How much will it take?

Overall Five-Year Funding Need: $3.9 Billion



Build on Current Foundation

Invest more in successful programs

- **Conservation trust funds** ($167 million (84%))
  - Clean Water Management Trust Fund
  - Farmland and Forest Preservation Trust Fund
  - Natural Heritage Trust Fund
  - Parks and Recreation Trust Fund
- **Landing Jobs** ($30 million (15%))
- **One North Carolina *Naturally*** ($ 3 million (1%))

Program/ Trust Fund	FY 2006 Funding	Proposed Additional Funding/year	Total Funding/year
Clean Water Management Trust Fund	$100 million	$39.5 million	$139.5 million
Natural Heritage Trust Fund	$19 million	$62.5 million	$81.5 million
Parks and Recreation Trust Fund	$45 million	$35 million	$80 million
Farm (and Forestland) Trust Fund	$50,000	$30 million	$30 million
Landing Jobs	$0	$30 million	$30 million
One NC *Naturally*	$0	$3 million	$3 million
TOTAL STATE FUNDING / YEAR	$164 million/year	$200 million/year	$364 million/year

If We're Successful....

Our children and grandchildren will know a North Carolina with:

- Clean water and air
- Abundant fish and wildlife
- Working farms and forests
- Places of historic and ecological value
- Parks and game lands to enjoy the beauty of North Carolina, to exercise, to hunt and fish

Clean Water Management Trust Fund

Mission: Protect natural buffers along streams through acquisition of land and easements; improve wastewater and stormwater treatment

Proposed additional Funding: $39.5 million/yr

Farmland and Forest Preservation Trust Fund

Current Mission: grants for purchasing development rights on farms and forestland; planning grants and incentives to encourage viability of working lands

Proposed additions to mission: Equal emphasis on working forest protection

Proposed funding: $30 million/yr

Natural Heritage Trust Fund

Current Mission: Fund purchase of significant natural and historic lands and buildings

Addition to mission: Restoration of historic buildings (up to 25% of funds)

Proposed additional Funding: $62.5 million/yr

Parks and Recreation Trust Fund

Current Mission: Funds acquisition of land and construction and restoration of facilities at state and local parks and trails; also funds access to coastal waters

Proposed additional funding: $35 million/yr

Landing Jobs: a new initiative

Mission: Fund projects that create jobs through land and historic preservation

- Tourism
- Specialty crop and value-added agriculture and forestry
- Rehabilitation of historic buildings in downtowns
- Entrepreneurial/workforce training/capacity building

Proposed Governance:

- Board appointed by legislature, governor and citizen reps
- Administered by NC Community Development Initiative through the NC Department of Commerce

Proposed Funding: $30 million/year

One North Carolina *Naturally*

Mission: Existing program within NCDENR that provides leadership, coordination, and evaluation for the state agencies and trust funds involved in land and water conservation

Proposed Funding: $3 million/year

LAND *for* TOMORROW

Ambassadors as of June 21, 2006

The Honorable Jim Holshouser, Former Governor of North Carolina
The Honorable Jim Hunt, Former Governor of North Carolina
The Honorable Bob Jordan, Former Lieutenant Governor of North Carolina
The Honorable Jim Martin, Former Governor of North Carolina
Becky Anderson, HandMade In America, Asheville
Denise Barnes, PhD, Preservation North Carolina, Durham
Lou Bissette, attorney and former mayor of Asheville
J. Breeden Blackwell, Past President, NC Association of County Commissioners, Fayetteville
Steve Blount, Rowan County Commissioner
Michael Brader-Araje, President, SunPocket Management, Durham
Kirk Bradley, Lee-Moore Oil Company, Sanford
George Breece, Former N.C. House Member, Cumberland County
Bruce Byers, North State Gas Service, Rutherfordton
Judy Coker, Cataloochee Ranch, Maggie Valley
Sue Cole, US Trust Company, Greensboro
John Cram, New Morning Ltd, Asheville
Graham Denton, Bank of America, Charlotte
Barry Eveland, Chair Emeritus, NC Citizens of Business and Industry
William Friday, President Emeritus, University of North Carolina
Wib Gulley, former state senator, Durham
John Herrera, Cooperative Communitaria Latina de Credito, Carrboro
George Howard, Restoration Systems, Raleigh
Sig Hutchinson, Publisher, Raleigh Downtowner, Raleigh
Thomas Krakauer, President Emeritus, NC Museum of Life and Science, Durham
Jim Leutze, Chancellor Emeritus, UNC-Wilmington
Sidney Locks, Pastor, Greenville
Todd Mansfield, Crosland Inc, Charlotte
John McArthur, Progress Energy, Raleigh
Sue McClinton, community volunteer, Asheville
Wayne McDevitt, UNC-Chapel Hill and Former DENR Secretary
Chuck McGrady, Henderson County Commissioner, Hendersonville
Charles Meeker, Mayor, Raleigh
Tift Merritt, country music grammy nominee, Carolina Beach
Carlton Midyette, Creedmoor Partners, Raleigh
Hugh Morton*, Grandfather Mountain
Chuck Neely, Former Wake County Legislator, Raleigh
Robert Partin, Mayor, Scotland Neck
H. Wade Reece, BB&T Insurance, Raleigh
Lisa Renstrom, Sierra Club, Raleigh
Tom Ross, Z. Smith Reynolds Foundation, Winston-Salem
Jennie Stultz, Mayor, Gastonia
Tom Taft, Taft Taft & Haigler, Greenville
Mike Tanner, Tanner Companies, Rutherfordton
Michael Tiemann, Red Hat, Raleigh
Larry William Tombaugh, Dean Emeritus, NCSU College of Natural Resources, Raleigh
Tom & Becca Valone, Great Outdoor Provision Company, Raleigh
Linwood & Jerome Vick, Vick Family Farms, Wilson
Jordan Whichard, The Daily Reflector, Greenville
Darrel J Williams, AIA, former Mecklenburg County Commissioner, Charlotte
David Womack, Womack Electric Co., Greenville

** February 19, 1921 – June 1, 2006*

LAND *for* TOMORROW

Partners as of June 21, 2006

1. Alexander County Voluntary Agricultural Board
2. Alliance for Historic Hillsborough
3. American Farmland Trust *
4. Appalachian Community for Progressive Sustainability
5. Appalachian Trail Conservancy
6. Appalachian Voices
7. Appalahian State University Sustainable Development Program
8. Audubon NC
9. Averasboro Battlefield Commission
10. Bald Head Island Conservancy
11. Be Active NC
12. Beaufort Historical Association
13. Bethel Rural Preservation Project
14. Black Family Land Trust
15. Blue Ridge Parkway Foundation
16. Blue Ridge Rural Land Trust
17. Cabarrus County
18. Cabarrus County Parks and Recreation Commission
19. Cabarrus County Watershed Improvement Commission
20. Cabarrus Soil Water Conservaion District
21. Cape Fear Regional Community Development Corporation
22. Cape Fear Resource Conservation & Development
23. Cape Fear River Assembly
24. Cape Fear River Watch
25. Capital Area Preservation
26. Carolina Arts Network
27. Carolina Canoe Club
28. Carolina Farm Stewardship Association
29. Carolina Mountain Land Conservancy
30. Carolinas Clean Air Coalition
31. Catawba College Center for the Environment
32. Catawba Lands Conservancy
33. Catawba Riverkeeper Foundation
34. Catawba Valley Heritage Alliance
35. Chatham County
36. Chimney Rock Village
37. Citizens for Transportation Alternatives
38. City of Albemarle
39. City of Asheville
40. City of Burlington
41. City of Concord
42. City of Durham
43. City of Fayetteville
44. City of Hickory
45. City of High Point Parks & Recreation Commission
46. City of Jacksonville
47. City of Kannapolis
48. City of Salisbury
49. Classical American Homes Preservation Trust
50. Clean Water Management Trust Fund
51. Cleveland County Community Development Corporation
52. Columbus County
53. Concord Greenway Advisory Committee
54. Conservation Council of NC
55. Conservation Trust for NC *
56. Cumberland County
57. Dan River Basin Association
58. Davidson County Tourism Recreation Investment Partnership
59. Davidson Lands Conservancy
60. Downtown Salisbury
61. Durham Central Park
62. Durham Convention & Visitors Bureau
63. Durham County
64. Durham Open Space and Trails Commission
65. Durham People's Alliance
66. Ellerbe Creek Watershed Association
67. Eno River Association
68. Environment NC *
69. Environmental and Conservation Organization
70. Environmental Defense
71. Foothills Conservancy of NC
72. Forsyth County Board of Health
73. Fort Braggt/Pope Air Force Base Regional Land Use Advisory Commission
74. Friends of Bolin Creek
75. Friends of State Parks
76. Friends of the Great Smoky Mountains National Park
77. Friends of the Mountains to Sea Trail
78. Friends of the Rocky River
79. Friends of West Point Park
80. Georgetown Renaissance Community Association
81. Greensboro Beautiful
82. Greensboro Parks and Recreation Commission
83. Guilford County Historic Preservation Commission
84. Guillford County Open Space Committee
85. Haywood County
86. Henderson-Vance Recreation and Parks Commission
87. Hickory Landmarks Society
88. Hickory Parks and Recreation Commission
89. High Country Conservancy
90. Highlands Greenway
91. Highlands-Cashiers Land Trust
92. Historic Charlotte
93. Historic Preservation Society of Durham
94. Historic Salisbury Foundation
95. Historic Stagville Foundation
96. Historic Wilmington Foundation

* Land for Tomorrow Steering Committee

LAND *for* TOMORROW

Partners as of June 21, 2006

97. Housing Assistance Corporation
98. Land Loss Prevention Project *
99. Land Trust Alliance Southeast Program
100. Land Trust For Central NC
101. Land Trust For the Little Tennessee
102. League of Women Voters of NC
103. Lumber River Conservancy
104. Madison County
105. Mecklenburg County
106. Mecklenburg County Parks and Recreation Department
107. Metropolitan Housing and CDC
108. Mountain Keepers
109. Murfreesboro Historical Association
110. National Committee for the New River
111. National Trust for Historic Preservation
112. NC Association of Soil & Water Conservation Districts Area XI
113. NC Botanical Garden Foundation: Executive Committee
114. NC Chapter of the American Planning Association
115. NC Coastal Federation
116. NC Coastal Land Trust
117. NC Community Development Initiative *
118. NC Conservation Network
119. NC Farm Transition Network
120. NC Forestry Association
121. NC Herpetological Society
122. NC Native Plant Society
123. NC Rail-Trails
124. NC Recreation and Park Association *
125. NC State Grange
126. NC Wildlife Federation
127. NC Willing Workers Small Farmers Inc.
128. Neuse River Foundation
129. New Bern Historical Society
130. New Hanover County Watershed Management Advisory Board
131. New River Foundation
132. Nicholas School of the Environment & Earth Sciences
133. Old Salem
134. Open Space Protection Collaborative
135. Orange County
136. Orange Soil & Water Conservation District
137. Orange Water and Sewer Authority
138. Outer Banks Community Development Corporation
139. Outer Banks Conservationists
140. Pacolet Area Conservancy
141. Pamlico-Tar River Foundation
142. Partners for Parks
143. Partnership for Watauga's Future
144. Pasquotank County
145. Piedmont Land Conservancy
146. Preservation Greensboro
147. Preservation NC *
148. Preservation Society of Asheville and Buncombe County
149. Quail Unlimited
150. Quality Forward
151. Railroad House Historical Association
152. Randolph County
153. Real Estate Services Group: Alacarte
154. Rites of Passage Youth Empowerment Foundation
155. RiverLink
156. Roanoke River Partners
157. Rocky Mount Edgecombe Community Development Corporation
158. Rowan County Tourism Development Authority
159. Rowan Museum
160. Rural Advancement Foundation International - USA
161. Rutherford County
162. Rutherford County Chamber of Commerce
163. Rutherford County Tourism Development Authority
164. Salisbury Parks and Recreation Advisory Board
165. Sandhills Area Land Trust
166. Sandhills Family Heritage Association
167. Sierra Club, NC Chapter
168. Southern Appalachian Forest Coalition
169. Southern Appalachian Highlands Conservancy
170. Southern Environmental Law Center
171. St. John's Grange
172. Stokes Soil & Water Conservation District
173. Surry County
174. Sustainable Farming Program at CCCC
175. Sustainable NC
176. Sustainable Sandhills
177. T. Gilbert Pearson Chapter of the National Audubon Society
178. Tar River Land Conservancy
179. The Conservation Fund *
180. The Mustard Seed Group
181. The Nature Conservancy *
182. The Village Project Inc.
183. The Wilderness Society
184. The Wildlife Society
185. Town & Country Realty of Asheville
186. Town of Carrboro
187. Town of Chapel Hill
188. Town of Cornelius
189. Town of Davidson
190. Town of Harrisburg
191. Town of Highlands
192. Town of Hillsborough

* Land for Tomorrow Steering Committee

LAND *for* TOMORROW

Partners as of June 21, 2006

193. Town of Hot Springs
194. Town of Huntersville
195. Town of Lake Lure
196. Town of Marshall
197. Town of Matthews
198. Town of Midland
199. Town of Mint Hill
200. Town of Mooresville
201. Town of Mount Pleasant
202. Town of Peachland
203. Town of Pineville
204. Town of Ruth
205. Town of Rutherfordton
206. Triad Environmental Action
207. Triangle Greenways Council
208. Triangle Land Conservancy
209. Triangle Rails-to-Trails Conservancy
210. Trout Unlimited
211. Trust for Public Land *
212. UHURU Community Development Corporation
213. Umstead Coalition
214. Wake County
215. Wake County Historic Preservation Commission
216. Watts Hospital-Hillandale Neighborhood Association
217. Western NC Alliance
218. Wilmington Historic Preservation Commission
219. Wilmington Tree Commission
220. Yadkin-Pee Dee Lakes Project

* Land for Tomorrow Steering Committee

NORTH CAROLINA HOUSING FINANCE AGENCY

$50 million per year for Affordable Housing

The North Carolina Housing Finance Agency utilizes the Housing Trust Fund to finance housing affordable to low-income households in North Carolina. The Agency proposes to use $50 million each year, for five years, to finance urgent repair, rental housing and home ownership opportunities. With $50 million it expects to:

- assist 6,000 households,
- leverage a total of $184 million of investment,
- create 2,840 jobs, and
- create $26 million in state and local tax revenues.

With the proposed $250 million investment the Agency could make more than three times the impact than in the Trust Fund's almost 20-year history. Listed below are the activities and how they could use $50 million annually.

Homeownership — $7,500,000

Rural Opportunities Mortgage Program – This program provides below-market mortgages of up to $50,000 per household, to be complemented by reduced interest rate mortgages from the U.S. Department of Agrigulture Rural Development, for very low-income home buyers. The Agency expects to assist 100 homebuyers. — $5,000,000

Down Payment Assistance Program – This program provides downpayment assistance of approximately $9,000 per household for low-income home buyers. The Agency expects to assist 280 home buyers. — $2,500,000

Rental Housing — $30,000,000

Supportive Housing Development Program – This program provides loans for the development of emergency, transitional or permanent supportive housing for homeless individuals and families, mentally ill persons, developmentally disabled persons, persons with addiction disorders, survivors of domestic violence, and persons with HIV/AIDS. The Agency expects to finance 550 units at a cost of approximately $18,200 per unit. — $10,000,000

Rental Production Program – This program provides loans as gap financing for the production of rental housing, primarily targeting households earning less than 50% of median income. The Agency expects to finance 1,060 units with approximately $14,200 per unit to leverage tax credit investment. — $15,000,000

Preservation Loan Program – This program provides loans to rehabilitate affordable apartments. The funds are used for capital improvements and system ugrades. Most of the properties are small and in rural areas. The Agency expects to preserve 330 affordable units at a cost of approximately $15,200 per unit. — $5,000,000

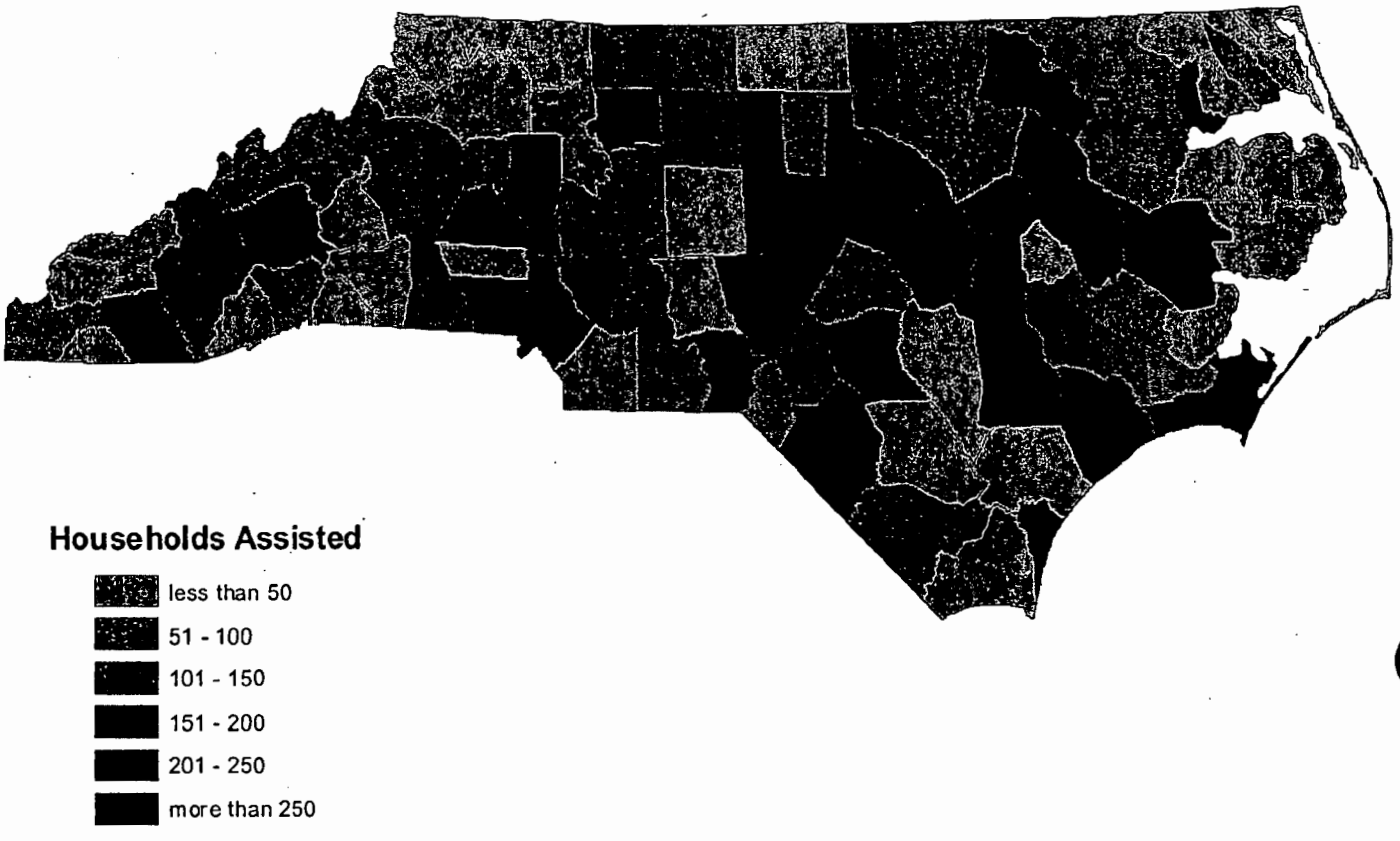
Urgent Repair — $12,500,000

Urgent Repair Program – This program provides grants to correct housing conditions that pose an imminent threat to life or safety of the household or cause an imminent threat of displacement. Assistance is targeted to elderly and disabled homeowners with earning less than 30% of area median income. The Agency expects to serve 3,675 households at a cost of approximately $3,400 per household. — $12,500,000

Annual Total — $50,000,000

Households Assisted 2000-2005 in Programs to be funded with the Housing Trust Fund

Since 2000 these programs have resulted in investment in every county in North Carolina.



North Carolina has significant housing needs. Examples of needs served by programs using the Housing Trust Fund include the following:

- At least 10,000 families and individuals are homeless, including more than 1,300 children.
- There are 195,650 individuals who qualify for Supplemental Security Income of $603 per month due to their inability to work. The state's average fair market rent is $631 per month, not including utilities.
- 145,000 renters pay more than 50% of their income for housing.
- 33,000 renters and 29,000 owners have severe housing condition problems (such as inadequate heating or leaking roofs).
- 53,000 elderly renters and 128,500 elderly homeowners have housing problems (including cost burden and poor conditions).

2006

HOUSE FINANCE

COMMITTEE MINUTES

North Carolina General Assembly

House Committee on Finance

Minutes

~

June 22, 2006

The House Committee on Finance met on Thursday, June 22, 2006 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Gibson, Howard, Luebke, McComas, Wainwright; Vice-Chairs Daughtridge, Hill, Ross, Weiss, and Womble; and Representatives B. Allen, Blackwood, Bordsen, Capps, Dockham, England, Faison, Folwell, Glazier, Hackney, Harrell, Lewis, Lucas, McGee, Rayfield, Underhill, Vinson, Walend, and Wiley. Also present were Sergeant-at-Arms Toussaint Avent, Nell Casper, Fred Hines, and Dusty Rhodes. Staff persons present included Cindy Avrette, Rodney Bizzell, David Crotts, Brenna Erford, Dan Ettefagh, Canaan Huie, Linda Millsaps, and Martha Walston. The Agenda and Visitor Registration Sheets are attached and incorporated into these minutes as **attachments 1 and 2**.

Chairman Wainwright called the meeting to order at 8:38 am and announced that **SB 540 – FRANCHISE TAX LOOPHOLE CLOSING** was removed from the Committee's calendar. He then recognized the eight (8) pages present: (1) Parker Brown of Northampton County, sponsored by Representative Ray; (2) Jordan Blackwell of Cumberland County, sponsored by Speaker Black; (3) Dylan Richard of Wake County, sponsored by Representative Farmer-Butterfield; (4) Wes Johnson of Wayne County, sponsored by Speaker Black; (5) Chad Walker of Harnett County, sponsored by Speaker Black; (6) Laura Creath of Cumberland County, sponsored by Representative Glazier; (7) Lorna Knick of Wake County, sponsored by Representative Capps; and (8) April Hodges of Carteret County, sponsored by Representative Preston.

The first bill under discussion by the Committee was **HB 945 – OMNIBUS OCC. TAXES** (see **attachment 3**). Chairman Wainwright reported that the House Finance Subcommittee on Occupancy Tax recommended that the House do not concur and that conferees be requested. Representative Luebke was recognized and explained that the bill has effective dates that need to be changed, as well as, municipalities that need to be removed from the content of the bill. Representative Luebke moved that the Committee recommend that the House do not concur and that conferees be requested for House Bill 945. Seeing no further discussion, Chairman Wainwright called the motion to a vote and it carried by consent.

The next bill considered by the Committee was **HB 2445 – HALIFAX OCCUPANCY TAX** (see **attachment 4**). Chairman Wainwright first recognized Representative Lucy Allen who explained that this bill modernizes the language that gives Halifax County the authority to levy an occupancy tax. Additionally, the bill changes the structure of the Tourism Development Authority in Halifax County to conform to the guidelines established by the Committee. Following the explanation, Representative Glazier moved that House Bill 2445 be given a favorable report by the

Committee. As there was no further debate, Chairman Wainwright called the motion to a vote and it carried without objection.

Chairman Wainwright then recognized Representative Miller to explain **HB 2477 – DURHAM COUNTY OCCUPANCY TAX MODIFICATION** (see **attachment 5**). Representative Miller reported that the bill extended by 10 months the time limit given to the Durham City Council to approve a plan for financing a Performing Arts Theater. Under the provisions of the bill, the time limit would be lengthened from fifty-four (54) months to sixty-four (64) months after the inception of the 1% occupancy tax increase. Representative Miller also stated that this bill received a recommendation for a favorable report from the Subcommittee on Occupancy Tax. Following the explanation, Representative Luebke expressed his support for the bill and moved that House Bill 2477 be given a favorable report by the Committee. Seeing no further discussion, Chairman Wainwright called the motion to a vote and it carried by consent.

The following bill considered by the Committee was **SB 1506 – ADDITIONAL ST. PAULS OCCUPANCY TAX** (see **attachment 6**). Representative Pierce was recognized and explained that this bill was approved by the Subcommittee on Occupancy Tax and authorizes the Town of St. Paul to levy an additional 2% occupancy tax. Following the explanation, Representative Hill was recognized and moved that Senate Bill 1506 be given a favorable report by the Committee. As there was no further debate, Chairman Wainwright called the motion to a vote and it carried without objection.

Without objection, the proposed committee substitute (PCS) for **HB 2259 – ELKIN OCCUPANCY TAX** (see **attachment 7**) was adopted for consideration by the Committee. Chairman Wainwright recognized Dan Ettefagh from Bill Drafting who explained that this bill authorizes the Towns of Elkin, Pilot Mountain, and Dobson to levy a six percent (6%) occupancy tax. He reported that this PCS was recommended for a favorable report from the Subcommittee on Occupancy Tax. Following the explanation, Chairman Wainwright recognized Representative Womble, Chair of the Subcommittee on Occupancy Tax, who moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. Seeing no further discussion, Chairman Wainwright called the motion to a vote and it carried by consent.

The next bill considered by the Committee was **SB 1431 – BURGAW OCCUPANCY TAX** (see **attachment 8**). Without objection, Chairman Wainwright placed the proposed committee substitute (PCS) before the Committee for consideration. He recognized Martha Walston of Fiscal Research who explained that the PCS authorizes the Town of Burgaw to levy a three percent (3%) occupancy tax. She also reported that this bill was previously approved by the Subcommittee on Occupancy Tax. Following the explanation, Representative Hill was recognized and moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. As there was no further debate, Chairman Wainwright called the motion to a vote and it carried without objection.

Chairman Wainwright then recognized Representative Walend to explain **SB 1328 – REGULATE GOLF CARTS/SALUDA & FAISON** (see **attachment 9**). She stated that the bill authorizes the City of Saluda and the Town of Faison to regulate golf carts on public streets or highways. Chairman Wainwright then recognized Representative Lewis who moved that Senate Bill 1328 be given a favorable report by the Committee. Seeing no further discussion, Chairman Wainwright called the motion to a vote and it carried by consent.

The following bill considered by the Committee was **SB 1512 – INCREASE PARKING FINES** (see **attachment 10**). Chairman Wainwright recognized Senator Atwater to give an

overview of the bill. He explained that this bill would raise the fine for overtime parking from five dollars ($5) to no more than fifty dollars ($50) in the city of Sanford. Senator Atwater also reported that there has been no opposition to this bill. Following the explanation, Representative Womble was recognized and moved that Senate Bill 1512 be given a favorable report. As there was no further debate, Chairman Wainwright called the motion to a vote and it carried without objection.

Chairman Wainwright then recognized Senator Phil Berger to explain **SB 1526 – REIDSVILLE DEANNEXATION** (see **attachment 11**). He stated that this bill removes 5.5 acres from the corporate limits of the City of Reidsville. Senator Berger also said that this bill has received no opposition. Following the explanation, Representative McGee moved that Senate Bill 1526 be given a favorable report. Seeing no further discussion, Chairman Wainwright called the motion to a vote and it carried by consent.

The next bill under the Committee's consideration was **SB 1552 – ADDITIONAL PERSONAL INCOME TAX FILING OPTION** (see **attachment 12**). Chairman Wainwright recognized Martha Walston of Fiscal Research to give an overview of the bill. Mrs. Walston explained that this bill would allow married couples the option of filing a joint return if one spouse is a nonresident with no North Carolina income. This bill would also allow North Carolina residents to file jointly in Georgia and South Carolina. Chairman then recognized Representative Luebke following Ms. Walston's explanation. Representative Luebke announced his support for the bill and moved that Senate Bill 1552 be given a favorable report. As there was no further debate, Chairman Wainwright called the motion to a vote and it carried without objection.

Chairman Wainwright then recognized Representative Womble who moved for the adoption of the proposed committee substitute for **SB 1283 – FRANCHISE TAX BASE CALCULATION** (see **attachment 13**). The motion carried. Senator Hartsell, the bill sponsor, was then recognized and explained that this bill clarifies the treatment of deferred tax assets in the computation of the franchise tax capital base. He also stated that this bill was a recommendation from the Revenue Laws Study Committee. Erskine Bowles, President of the University of North Carolina System, was then recognized to give an additional explanation of the bill. Mr. Bowles said that the purpose of the bill is to allow the Board of Governors to delegate more authority to the President of the University of North Carolina in order for the Board of Governors to focus more on policy issues. Chairman Wainwright then recognized Representatives Faison and McComas who moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. Seeing no further discussion, Chairman Wainwright called the motion to a vote and it carried by consent.

Without objection, Chairman Wainwright placed the proposed committee substitute for **SB 1809 – UNIVERSITY INDEBTEDNESS PROJECTS** (see **attachment 14**) before the Committee for consideration. To explain the bill, Senator Kerr was recognized and stated that this bill authorizes new self-liquidating indebtedness projects for institutions in the University of North Carolina system. Following the explanation, Rob Nelson, Vice President of Finance for the University of North Carolina, was recognized and stated that the construction costs for university projects have increased from 8 to 20 percent. The University of North Carolina system needs additional funding from special indebtedness in order to keep up with the increasing construction costs. Representative Bernard Allen was then recognized and stated that special indebtedness tuition fees should not increase to the point where tuition is unaffordable. Representative Womble was recognized and expressed his support for the bill and moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. As there was no further debate, Chairman Wainwright called the motion to a vote and it carried without objection.

Chairman Wainwright then recognized Senator Bingham to give an overview of **SB 1852 – INCORPORATE MIDWAY** (see **attachment 15**). Senator Bingham stated that this bill was a recommendation of the Joint Legislative Commission on Municipal Incorporations and incorporates the Town of Midway in Davidson County. Representative Dockham was recognized and reported that the Davidson County delegation was in favor of this bill. Chairman Wainwright then recognized Representative Howard who moved that Senate Bill 1852 be given a favorable report by the Committee. Seeing no further discussion, Chairman Wainwright called the motion to a vote and it carried by consent.

The final bill considered by the Committee was **SB 1905 – ASHEVILLE ANNEXATION** (see **attachment 16**). Chairman Wainwright then recognized Representative Howard who explained that the bill annexes a small piece of property that was left out of a previous annexation made in 2005. Following the explanation, Chairman Wainwright recognized Representatives Hill and Fisher who moved that Senate Bill 1905 be given a favorable report by the Committee. As there was no further debate, Chairman Wainwright called the motion to a vote and it carried without objection.

Having no further business before the Committee, Chairman Wainwright then adjourned the meeting at 9:15 am.

Respectfully submitted,

Representative William Wainwright
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:

1. Agenda
2. Visitor Registration Sheets
3. House Bill 945 (and related materials)
4. House Bill 2445 (and related materials)
5. House Bill 2477 (and related materials)
6. Senate Bill 1506 (and related materials)
7. House Bill 2259 (and related materials)
8. Senate Bill 1341 (and related materials)
9. Senate Bill 1328 (and related materials)
10. Senate Bill 1512 (and related materials)
11. Senate Bill 1526 (and related materials)
12. Senate Bill 1552 (and related materials)
13. Senate Bill 1283 (and related materials)
14. Senate Bill 1809 (and related materials)
15. Senate Bill 1852 (and related materials)
16. Senate Bill 1905 (and related materials)

North Carolina General Assembly

House Committee on Finance

Minutes

~

June 22, 2006

The House Committee on Finance met on Thursday, June 22, 2006 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Gibson, Howard, Luebke, McComas, Wainwright; Vice-Chairs Daughtridge, Hill, Ross, Weiss, and Womble; and Representatives B. Allen, Blackwood, Bordsen, Capps, Dockham, England, Faison, Folwell, Glazier, Hackney, Harrell, Lewis, Lucas, McGee, Rayfield, Underhill, Vinson, Walend, and Wiley. Also present were Sergeant-at-Arms Toussaint Avent, Nell Casper, Fred Hines, and Dusty Rhodes. Staff persons present included Cindy Avrette, Rodney Bizzell, David Crotts, Brenna Erford, Dan Ettefagh, Canaan Huie, Linda Millsaps, and Martha Walston. The Agenda and Visitor Registration Sheets are attached and incorporated into these minutes as **attachments 1 and 2**.

Chairman Wainwright called the meeting to order at 8:38 am and announced that **SB 540 – FRANCHISE TAX LOOPHOLE CLOSING** was removed from the Committee's calendar. He then recognized the eight (8) pages present: (1) Parker Brown of Northampton County, sponsored by Representative Ray; (2) Jordan Blackwell of Cumberland County, sponsored by Speaker Black; (3) Dylan Richard of Wake County, sponsored by Representative Farmer-Butterfield; (4) Wes Johnson of Wayne County, sponsored by Speaker Black; (5) Chad Walker of Harnett County, sponsored by Speaker Black; (6) Laura Creath of Cumberland County, sponsored by Representative Glazier; (7) Lorna Knick of Wake County, sponsored by Representative Capps; and (8) April Hodges of Carteret County, sponsored by Representative Preston.

The first bill under discussion by the Committee was **HB 945 – OMNIBUS OCC. TAXES** (see **attachment 3**). Chairman Wainwright reported that the House Finance Subcommittee on Occupancy Tax recommended that the House do not concur and that conferees be requested. Representative Luebke was recognized and explained that the bill has effective dates that need to be changed, as well as, municipalities that need to be removed from the content of the bill. Representative Luebke moved that the Committee recommend that the House do not concur and that conferees be requested for House Bill 945. Seeing no further discussion, Chairman Wainwright called the motion to a vote and it carried by consent.

The next bill considered by the Committee was **HB 2445 – HALIFAX OCCUPANCY TAX** (see **attachment 4**). Chairman Wainwright first recognized Representative Lucy Allen who explained that this bill modernizes the language that gives Halifax County the authority to levy an occupancy tax. Additionally, the bill changes the structure of the Tourism Development Authority in Halifax County to conform to the guidelines established by the Committee. Following the explanation, Representative Glazier moved that House Bill 2445 be given a favorable report by the

Committee. As there was no further debate, Chairman Wainwright called the motion to a vote and it carried without objection.

Chairman Wainwright then recognized Representative Miller to explain **HB 2477 – DURHAM COUNTY OCCUPANCY TAX MODIFICATION** (see **attachment 5**). Representative Miller reported that the bill extended by 10 months the time limit given to the Durham City Council to approve a plan for financing a Performing Arts Theater. Under the provisions of the bill, the time limit would be lengthened from fifty-four (54) months to sixty-four (64) months after the inception of the 1% occupancy tax increase. Representative Miller also stated that this bill received a recommendation for a favorable report from the Subcommittee on Occupancy Tax. Following the explanation, Representative Luebke expressed his support for the bill and moved that House Bill 2477 be given a favorable report by the Committee. Seeing no further discussion, Chairman Wainwright called the motion to a vote and it carried by consent.

The following bill considered by the Committee was **SB 1506 – ADDITIONAL ST. PAULS OCCUPANCY TAX** (see **attachment 6**). Representative Pierce was recognized and explained that this bill was approved by the Subcommittee on Occupancy Tax and authorizes the Town of St. Paul to levy an additional 2% occupancy tax. Following the explanation, Representative Hill was recognized and moved that Senate Bill 1506 be given a favorable report by the Committee. As there was no further debate, Chairman Wainwright called the motion to a vote and it carried without objection.

Without objection, the proposed committee substitute (PCS) for **HB 2259 – ELKIN OCCUPANCY TAX** (see **attachment 7**) was adopted for consideration by the Committee. Chairman Wainwright recognized Dan Ettefagh from Bill Drafting who explained that this bill authorizes the Towns of Elkin, Pilot Mountain, and Dobson to levy a six percent (6%) occupancy tax. He reported that this PCS was recommended for a favorable report from the Subcommittee on Occupancy Tax. Following the explanation, Chairman Wainwright recognized Representative Womble, Chair of the Subcommittee on Occupancy Tax, who moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. Seeing no further discussion, Chairman Wainwright called the motion to a vote and it carried by consent.

The next bill considered by the Committee was **SB 1431 – BURGAW OCCUPANCY TAX** (see **attachment 8**). Without objection, Chairman Wainwright placed the proposed committee substitute (PCS) before the Committee for consideration. He recognized Martha Walston of Fiscal Research who explained that the PCS authorizes the Town of Burgaw to levy a three percent (3%) occupancy tax. She also reported that this bill was previously approved by the Subcommittee on Occupancy Tax. Following the explanation, Representative Hill was recognized and moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. As there was no further debate, Chairman Wainwright called the motion to a vote and it carried without objection.

Chairman Wainwright then recognized Representative Walend to explain **SB 1328 – REGULATE GOLF CARTS/SALUDA & FAISON** (see **attachment 9**). She stated that the bill authorizes the City of Saluda and the Town of Faison to regulate golf carts on public streets or highways. Chairman Wainwright then recognized Representative Lewis who moved that Senate Bill 1328 be given a favorable report by the Committee. Seeing no further discussion, Chairman Wainwright called the motion to a vote and it carried by consent.

The following bill considered by the Committee was **SB 1512 – INCREASE PARKING FINES** (see **attachment 10**). Chairman Wainwright recognized Senator Atwater to give an

overview of the bill. He explained that this bill would raise the fine for overtime parking from five dollars ($5) to no more than fifty dollars ($50) in the city of Sanford. Senator Atwater also reported that there has been no opposition to this bill. Following the explanation, Representative Womble was recognized and moved that Senate Bill 1512 be given a favorable report. As there was no further debate, Chairman Wainwright called the motion to a vote and it carried without objection.

Chairman Wainwright then recognized Senator Phil Berger to explain **SB 1526 – REIDSVILLE DEANNEXATION** (see **attachment 11**). He stated that this bill removes 5.5 acres from the corporate limits of the City of Reidsville. Senator Berger also said that this bill has received no opposition. Following the explanation, Representative McGee moved that Senate Bill 1526 be given a favorable report. Seeing no further discussion, Chairman Wainwright called the motion to a vote and it carried by consent.

The next bill under the Committee's consideration was **SB 1552 – ADDITIONAL PERSONAL INCOME TAX FILING OPTION** (see **attachment 12**). Chairman Wainwright recognized Martha Walston of Fiscal Research to give an overview of the bill. Mrs. Walston explained that this bill would allow married couples the option of filing a joint return if one spouse is a nonresident with no North Carolina income. This bill would also allow North Carolina residents to file jointly in Georgia and South Carolina. Chairman then recognized Representative Luebke following Ms. Walston's explanation. Representative Luebke announced his support for the bill and moved that Senate Bill 1552 be given a favorable report. As there was no further debate, Chairman Wainwright called the motion to a vote and it carried without objection.

Chairman Wainwright then recognized Representative Womble who moved for the adoption of the proposed committee substitute for **SB 1283 – FRANCHISE TAX BASE CALCULATION** (see **attachment 13**). The motion carried. Senator Hartsell, the bill sponsor, was then recognized and explained that this bill clarifies the treatment of deferred tax assets in the computation of the franchise tax capital base. He also stated that this bill was a recommendation from the Revenue Laws Study Committee. Erskine Bowles, President of the University of North Carolina System, was then recognized to give an additional explanation of the bill. Mr. Bowles said that the purpose of the bill is to allow the Board of Governors to delegate more authority to the President of the University of North Carolina in order for the Board of Governors to focus more on policy issues. Chairman Wainwright then recognized Representatives Faison and McComas who moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. Seeing no further discussion, Chairman Wainwright called the motion to a vote and it carried by consent.

Without objection, Chairman Wainwright placed the proposed committee substitute for **SB 1809 – UNIVERSITY INDEBTEDNESS PROJECTS** (see **attachment 14**) before the Committee for consideration. To explain the bill, Senator Kerr was recognized and stated that this bill authorizes new self-liquidating indebtedness projects for institutions in the University of North Carolina system. Following the explanation, Rob Nelson, Vice President of Finance for the University of North Carolina, was recognized and stated that the construction costs for university projects have increased from 8 to 20 percent. The University of North Carolina system needs additional funding from special indebtedness in order to keep up with the increasing construction costs. Representative Bernard Allen was then recognized and stated that special indebtedness tuition fees should not increase to the point where tuition is unaffordable. Representative Womble was recognized and expressed his support for the bill and moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. As there was no further debate, Chairman Wainwright called the motion to a vote and it carried without objection.

Chairman Wainwright then recognized Senator Bingham to give an overview of **SB 1852 – INCORPORATE MIDWAY** (see **attachment 15**). Senator Bingham stated that this bill was a recommendation of the Joint Legislative Commission on Municipal Incorporations and incorporates the Town of Midway in Davidson County. Representative Dockham was recognized and reported that the Davidson County delegation was in favor of this bill. Chairman Wainwright then recognized Representative Howard who moved that Senate Bill 1852 be given a favorable report by the Committee. Seeing no further discussion, Chairman Wainwright called the motion to a vote and it carried by consent.

The final bill considered by the Committee was **SB 1905 – ASHEVILLE ANNEXATION** (see **attachment 16**). Chairman Wainwright then recognized Representative Howard who explained that the bill annexes a small piece of property that was left out of a previous annexation made in 2005. Following the explanation, Chairman Wainwright recognized Representatives Hill and Fisher who moved that Senate Bill 1905 be given a favorable report by the Committee. As there was no further debate, Chairman Wainwright called the motion to a vote and it carried without objection.

Having no further business before the Committee, Chairman Wainwright then adjourned the meeting at 9:15 am.

Respectfully submitted,

Representative William Wainwright
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:

1. Agenda
2. Visitor Registration Sheets
3. House Bill 945 (and related materials)
4. House Bill 2445 (and related materials)
5. House Bill 2477 (and related materials)
6. Senate Bill 1506 (and related materials)
7. House Bill 2259 (and related materials)
8. Senate Bill 1341 (and related materials)
9. Senate Bill 1328 (and related materials)
10. Senate Bill 1512 (and related materials)
11. Senate Bill 1526 (and related materials)
12. Senate Bill 1552 (and related materials)
13. Senate Bill 1283 (and related materials)
14. Senate Bill 1809 (and related materials)
15. Senate Bill 1852 (and related materials)
16. Senate Bill 1905 (and related materials)

AGENDA
House Finance Committee

ATTACHMENT 1

Thursday, June 22, 2006
8:30 a.m.
Room 544 LOB
Chaired by: Rep. Wainwright

Co-Chairs

Representative Martha Alexander
Representative Pryor Gibson
Representative Julia Howard

Representative Paul Luebke
Representative Danny McComas
Representative William Wainwright

Call to Order & Introduction of Pages

Bills:

HB 945	**OMNIBUS OCC. TAXES (FOR CONCURRENCE)**	*Reps. Luebke, Michaux, Miller, & Wilkins*
HB 2259	**ELKIN OCCUPANCY TAX**	*Rep. Harrell*
HB 2445	**HALIFAX OCCUPANCY TAX**	*Reps. L. Allen & Ed Jones*
HB 2477	**DURHAM COUNTY OCCUPANCY TAX MODIFICATION**	*Reps. Miller*
SB 540	**FRANCHISE TAX LOOPHOLE CLOSING**	*Sen. Clodfelter*
SB 1283	**FRANCHISE TAX BASE CALCULATION**	*Sen. Hartsell*
SB 1328	**REGULATE GOLF CARTS/SALUDA & FAISON**	*Sen. Apodaca*
SB 1431	**BURGAW OCCUPANCY TAX**	*Sen. Soles*
SB 1506	**ADDITIONAL ST. PAULS OCCUPANCY TAX**	*Sen. Weinstein*
SB 1512	**INCREASE PARKING FINES**	*Sen. Atwater*
SB 1526	**REIDSVILLE DEANNEXATION**	*Sen. P. Berger*
SB 1552	**ADDITIONAL PERSONAL INCOME TAX FILING OPTION**	*Sen. Webster*
SB 1809	**UNIVERSITY INDEBTEDNESS PROJECTS**	*Sen. Kerr*
SB 1852	**INCORPORATE MIDWAY**	*Sen. Bingham*
SB 1905	**ASHEVILLE ANNEXATION**	*Sen. Apodaca*

Adjournment

ATTACHMENT 2

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 22, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
R. Paul Wilms	NCHBA
[illegible]	NCATL
Katherine Skemer	TNC
David Kashdan	TNC
Sharon Miller	CUCA
Amy Schilder	LANC/HANC
Scott Bowers	Jordan Price
Susanne Stecher	NCRA
[illegible]	RANC - NCWN
[illegible]	NCDOR
Sam McLaurin	NCDOR
Karl Knapp	NCDOR

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 22, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Isaac Linnart	Smith Anderson 150 Fayetteville St.
Freddie Zufelt	Smith Anderson
Dana Simpson	Smith Anders—
Will Quick	Sen. Weinstein
Ryan Pusey	Rep. Glazier
Henry M Lancaster	LCA
Steve Wall	DENR
Paul Mayer	NCACC
Gary Hoy	NC LRC
Richard Hamilton	NC LRC
Gordon Myers	" "

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 22, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
David Crawford	AIA NC
Edgar Miller	CTNC

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 22, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Paul Stock	NCBA

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 22, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
DAVID BARNES	Poyner Spruill
Lu-Ann Coe Perryman	CFSA
Stephanie Borko	Charlotte Chamber
Sarah Sands	WCSR
Roger Bone	Bone + Assoc
Cathy Wright	Gov. office
Joni Worthington	UNC
Andy Romanet	NCLM
Cam Cavell	BP of NC
Rob Nelson	CINC
Erskine Bowles	UNC

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 22, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Mobley	GOV Office
DON HARMON	DOC
Lee Hodges	ICCLH
Elizabeth Dalton	NCRMA
Joshua Wynne	UNC
TERRENCE TEBBUTT	UNC
Kevin FitzGerald	UNC
Rodney Axtman	DHHS
JOHN GOODMAN	NCCRT
Kathy Hawkins	Progress Energy
STAN BINGHAM	N.C. SENATE

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 22, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Andy Ellen	NCLM
Dick Carlton	
Heather Randell	NC Sierra Club
Bill McNeil	NC Rural Center
Ken Melton	D.O.R.
Bobby Conway	CEA
Anthony Allen	NCACC
Paige Hall	Gov. Office
Angie Harris	Marqui Taylor
Kristin Kelly	gov. office

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 3

HOUSE BILL 945

Committee Substitute Favorable 6/2/05

Senate Finance Committee Substitute Favorable 8/9/05

Short Title: Omnibus Occ. Taxes. (Local)

Sponsors:

Referred to:

March 29, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE LEVY OF ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAXES IN THE TOWNS OF BENSON, BOILING SPRINGS, AND KENLY, TO AMEND THE OCCUPANCY TAXES IN CLAY COUNTY, HALIFAX, SELMA, AND SMITHFIELD AND TO AUTHORIZE THE TOWN OF CLAYTON TO HOLD AN ADVISORY REFERENDUM ON ELECTING SOME MEMBERS OF ITS TOWN COUNCIL BY DISTRICT AND SOME AT LARGE.

The General Assembly of North Carolina enacts:

PART I. BENSON OCCUPANCY TAX.

SECTION 1.1. Occupancy Tax. – (a) Authorization and Scope. – The Town of Benson may levy a room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 1.1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 1.1.(c) Distribution and Use of Tax Revenue. – The Town of Benson shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Johnston County Tourism Authority created in Chapter 647 of the 1987 Session Laws. The Johnston County Tourism Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Benson and shall use the remainder for tourism-related expenditures in Benson. In accordance with the

North Carolina Constitution and the United States Constitution, the tax proceeds may be used only for the direct benefit of Benson. None of the proceeds may be used to promote travel or tourism in areas within Johnston County that are outside of Benson or for tourism-related expenditures in the county that are outside of Benson. The net proceeds of the occupancy tax levied under this Part shall supplement rather than supplant any proceeds being used in the Town of Benson derived from the occupancy tax levied by Johnston County pursuant to Chapter 647 of the 1987 Session Laws.

The following definitions apply in this subsection:

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

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

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

PART II. BOILING SPRINGS OCCUPANCY TAX.

SECTION 2.1. Occupancy Tax. – (a) Authorization and Scope. – The Boiling Springs Town Council may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 2.1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 2.1.(c) Distribution and Use of Tax Revenue. – The Town of Boiling Springs shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Boiling Springs Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Boiling Springs and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

(1) Net proceeds. – Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance

officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

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

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

SECTION 2.2. Boiling Springs Tourism Development Authority. – (a) Appointment and Membership. – When the Boiling Springs Town Council adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a town Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the town, and at least one-half of the members must be individuals who are currently active in the promotion of travel and tourism in the town. The town council shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

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

SECTION 2.2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in this act. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

SECTION 2.2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Boiling Springs Town Council on its receipts and expenditures for the preceding quarter and for the year in such detail as the town council may require.

PART III. KENLY OCCUPANCY TAX.

SECTION 3.1. Occupancy Tax. – (a) Authorization and Scope. – The Town of Kenly may levy a room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit

charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 3.1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 3.1.(c) Distribution and Use of Tax Revenue. – The Town of Kenly shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Johnston County Tourism Authority created in Chapter 647 of the 1987 Session Laws. The Johnston County Tourism Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Kenly and shall use the remainder for tourism-related expenditures in Kenly. In accordance with the North Carolina Constitution and the United States Constitution, the tax proceeds may be used only for the direct benefit of Kenly. None of the proceeds may be used to promote travel or tourism in areas within Johnston County that are outside of the district or for tourism-related expenditures in the county that are outside of Kenly. The net proceeds of the occupancy tax levied under this Part shall supplement rather than supplant any proceeds being used in the Town of Kenly derived from the occupancy tax levied by Johnston County pursuant to Chapter 647 of the 1987 Session Laws.

The following definitions apply in this subsection:

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

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

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

PART IV. HALIFAX COUNTY OCCUPANCY TAX.

SECTION 4. Chapter 377 of the 1987 Session Laws, as amended by S.L. 2005-46, reads as rewritten:

"**Section 1.** Occupancy ~~tax.~~Tax. – (a) Authorization and ~~scope.~~Scope. – The Halifax County Board of Commissioners may levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the county that is subject to sales tax imposed by the State under G.S 105-164.4(a)(3). This tax is in

addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

(a1) Authorization of ~~additional tax.~~Additional Tax. – In addition to the tax authorized by subsection (a) of this section, the Halifax County Board of Commissioners may levy an additional room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. The levy, collection, administration, and repeal of the tax authorized by this subsection ~~must~~shall be in accordance with the provisions of this section. Halifax County may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

(b) Administration. – A tax levied under this section ~~must~~shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

(c) Distribution and ~~use~~Use of ~~tax revenue.~~Tax Revenue. – Halifax County ~~must~~,shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Halifax County Tourism Development Authority. The Authority ~~must~~shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Halifax County and ~~must~~shall use the remainder for tourism-related expenditures.

The following definitions apply to this subsection:

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

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

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

"**Sec. 2.** Tourism Development Authority. – (a) Appointment and ~~membership.~~Membership. – When the Halifax County Board of Commissioners adopts a resolution levying a room occupancy tax under this act, it ~~must~~shall also adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution ~~must~~shall provide for the membership of the Authority including the members' qualifications and terms of office, and for the filling of vacancies on the Authority. At least one-fifth of the members must be individuals who are affiliated with businesses that collect the tax in the county, and at least ~~three-fourths~~one-half of the members must

be individuals who are currently active in the promotion of travel and tourism in the county. ~~The Authority must designate one member as chair and one member as treasurer.~~The board of commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

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

(b) Duties. – The Authority must expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act. The Authority must promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

(c) Reports. – The Authority ~~must~~shall report quarterly and at the close of the fiscal year to the Halifax County Board of ~~County~~ Commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the Board may require.

"**Sec. 3.** This act is effective upon ratification."

PART V. SELMA OCCUPANCY TAX.

SECTION 5. Part X of S.L. 2001-439 reads as rewritten:

"**SECTION 10.1.** Occupancy ~~tax.~~Tax. – (a) Authorization and Scope. – The Selma Town Council ~~of the Town of Selma~~ may levy a room occupancy tax of one percent (1%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

(a1) Authorization of Additional Tax. – In addition to the tax authorized by subsection (a) of this section, the Selma Town Council may levy an additional room occupancy tax of up to one percent (1%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. The levy, collection, administration, and repeal of the tax authorized by this subsection must be in accordance with the provisions of this section. The Selma Town Council may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

"**SECTION 10.1.(b)** Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

"**SECTION 10.1.(c)** Distribution and Use of Tax Revenue. – The Town of Selma shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Johnston County Tourism Authority created in Chapter 647 of the 1987 Session Laws. The Johnston County Tourism Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Selma and shall use the

remainder for tourism-related expenditures in Selma. In accordance with the North Carolina Constitution and the United States Constitution, the tax proceeds may be used only for the direct benefit of Selma. None of the proceeds may be used to promote travel or tourism in areas within Johnston County that are outside of Selma or for tourism-related expenditures in the county that are outside of Selma. The net proceeds of the occupancy tax levied under this Part shall supplement rather than supplant any proceeds being used in the Town of Selma derived from the occupancy tax levied by Johnston County pursuant to Chapter 647 of the 1987 Session Laws.

The following definitions apply in this subsection:

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

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

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

~~"**SECTION 10.2.** A tax levied under this Part expires five years after the effective date of its levy. The town's authority to levy a tax under this Part expires five years after the effective date of its levy of a tax under this Part. The expiration of a tax pursuant to this Part does not affect the rights or liabilities of the town, a taxpayer, or another person arising under the expired tax before the effective date of its expiration; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the expired tax before the effective date of its expiration.~~"

PART VI. SMITHFIELD OCCUPANCY TAX.

SECTION 6. Part XI of S.L. 2001-439 reads as rewritten:

"**SECTION 11.1.** Occupancy ~~tax.~~Tax. – (a) Authorization and Scope. – The Smithfield Town Council ~~of the Town of Smithfield~~ may levy a room occupancy tax of one percent (1%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

(a1) Authorization of Additional Tax. – In addition to the tax authorized by subsection (a) of this section, the Smithfield Town Council may levy an additional room

occupancy tax of up to one percent (1%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. The levy, collection, administration, and repeal of the tax authorized by this subsection must be in accordance with the provisions of this section. The Smithfield Town Council may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

"**SECTION 11.1.(b)** Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

"**SECTION 11.1.(c)** Distribution and Use of Tax Revenue. – The Town of Smithfield shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Johnston County Tourism Authority created in Chapter 647 of the 1987 Session Laws. The Johnston County Tourism Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Smithfield and shall use the remainder for tourism-related expenditures in Smithfield. In accordance with the North Carolina Constitution and the United States Constitution, the tax proceeds may be used only for the direct benefit of Smithfield. None of the proceeds may be used to promote travel or tourism in areas within Johnston County that are outside of Smithfield or for tourism-related expenditures in the county that are outside of Smithfield. The net proceeds of the occupancy tax levied under this Part shall supplement rather than supplant any proceeds being used in the Town of Smithfield derived from the occupancy tax levied by Johnston County pursuant to Chapter 647 of the 1987 Session Laws.

The following definitions apply in this subsection:

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

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

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

~~"**SECTION 11.2.** A tax levied under this Part expires five years after the effective date of its levy. The town's authority to levy a tax under this Part expires five years after the effective date of its levy of a tax under this Part. The expiration of a tax pursuant to this Part does not affect the rights or liabilities of the town, a taxpayer, or another person arising under the expired tax before the effective date of its expiration; nor does it affect~~

~~the right to any refund or credit of a tax that would otherwise have been available under the expired tax before the effective date of its expiration.~~"

PART VII. CLAY COUNTY OCCUPANCY TAX.

SECTION 7.1. Chapter 969 of the 1985 Session Laws, as amended by Chapter 195 of the 1987 Session Laws, reads as rewritten:

"**Section 1.** Occupancy Tax. (a) Authorization and Scope. – The board of commissioners of a county may ~~by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the county that is subject to sales tax imposed by the State under ~~G.S. 105-164.4(3).~~G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious ~~organizations.~~organizations when furnished in furtherance of their nonprofit purpose.

~~(b) Collection. Every operator of a business subject to the tax levied under this act shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

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

~~A return filed with the county finance officer under this act is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

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

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

~~or forgive the penalties imposed by this subsection.~~ A tax levied under this act shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this act.

(e) Distribution and Use of Tax Revenue. – Except as provided in Section 2 of this act for Durham ~~County, a taxing county shall place the net proceeds of a tax levied under this act in a special Travel and Tourism Fund. Revenue in this Fund may be used only to promote travel and tourism in the county. As used in this subsection, "net proceeds" means gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer.~~County, the distributing authority shall distribute and use the net proceeds of the occupancy tax levied under this section in accordance with this subsection. The distributing authority shall be the taxing county, unless a Tourism Development Authority is required to be established under Section 1.1 of this act. If a Tourism Development Authority is established, then the Tourism Development Authority shall be the distributing authority. The distributing authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in the county and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

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

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

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

~~(f) Effective Date of Levy. A tax levied under this act shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

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

"**Sec. 1.1.** County Tourism Development Authority. – (a) Appointment and Membership. – When the annual net proceeds of the occupancy tax levied under Section 1 of this act exceed one hundred fifty thousand dollars ($150,000), the county Board of Commissioners shall adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the county, and at least one-half of the members must be individuals who are currently active in the promotion of travel and tourism in the county. The board of commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

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

(b) Duties. – If the board of commissioners establishes a Tourism Development Authority as provided in subsection (a) of this section, then the Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in this act. The Authority shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

(c) Reports. – If the board of commissioners establishes a Tourism Development Authority as provided in subsection (a) of this section, then the Authority shall report quarterly and at the close of the fiscal year to the county board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

"**Sec. 2.** Use and Distribution of Tax Revenue in Durham County. Durham County shall retain fifty-seven and one-half percent (57-1/2%) of the revenue collected from a tax levied under this act and shall distribute the remaining forty-two and one-half percent (42-1/2%) of the revenue to the City of Durham. Funds retained by the county or distributed to the City of Durham may be used for any purpose authorized by law, except that at least twenty-five percent (25%) of the funds so retained or distributed must be used for promotion of travel and tourism.

Sec. 3. This act applies only to the following counties: Graham, Clay, Jackson, Durham, Macon, Polk, and Transylvania.

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

SECTION 7.2. Section 3 of Chapter 118 of the 1987 Session Laws reads as rewritten:

"**Sec. 3.** This act applies only to the following counties: ~~Clay,~~ Graham, Jackson, and Macon."

SECTION 7.3. This part applies only to Clay County.

PART VIII. UNIFORM PROVISIONS.

SECTION 8.1. G.S. 153A-155(g) reads as rewritten:

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

SECTION 8.2. G.S. 160A-215 reads as rewritten:

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

PART IX. CLAYTON ADVISORY REFERENDUM ON TOWN COUNCIL VOTING DISTRICTS.

SECTION 9.1. The Clayton Town Council may, by resolution, direct the Johnston County Board of Elections to conduct an advisory referendum on whether the Town should consider amending the manner by which voters elect Council members. The referendum shall be conducted in accordance with Chapter 163 of the General Statutes. The form of the question to be presented on a ballot for such a referendum shall be:

"Should the Clayton Town council consider amending the manner by which voters elect Council members by designating that some members are elected from voting districts to be drawn by the Town Council and other members are elected at large?

[ ] YES [ ] NO"

SECTION 9.2. This part expires January 1, 2006.

PART X. EFFECTIVE DATE.

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

HOUSE BILL 945: Omnibus Occ. Taxes

2

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 22, 2006
Introduced by:	Reps. Luebke, Michaux, Miller, Wilkins	**Summary by:**	Martha Walston
Version:	Third Edition		Committee Counsel

SUMMARY: House Bill 945 is back in House Finance for a recommendation to concur or not to concur in the Senate Committee Substitute.

THE HOUSE FINANCE SUBCOMMITTEE ON OCCUPANCY TAX RECOMMENDS THAT THE HOUSE FINANCE COMMITTEE DO NOT CONCUR.

CURRENT LAW: The House version of House Bill 945 also authorized an occupancy tax for Caswell County, Yanceyville, Eden and Reidsville. The occupancy taxes for Eden and Reidsville were enacted last session in a separate bill. SB 339, which is in a conference committee, authorizes an occupancy tax for Caswell County and Yanceyville. The House version also made changes to the Durham occupancy tax and provisions pertaining to Durham County public-private partnerships. The Durham changes were enacted last session in separate bills.

BILL ANALYSIS: The Senate committee substitute contains the following provisions:

Benson and Kenly (Parts I and III) (These provisions are in the House Version)

The towns of Benson and Kenly are located in Johnston County. Neither town currently levies an occupancy tax, but Johnston County does levy a 3% tax. HB 945 authorizes a 2% tax in each town, and, if enacted, the total amount levied in Benson and Kenly would be 5% (when combined with the county rate). The Johnston County Tourism Development Authority would administer the proceeds.

Boiling Springs (Part II) (This provision is in the House Version)

The Town of Boiling Springs is located in Cleveland County. It does not currently levy an occupancy tax, but Cleveland Count does levy a 3% tax. HB 945 authorizes the levy of a 3% tax in the town, and, if enacted, the total amount levied in Boiling Springs will be 6% (when combined with the county rate).**This language is in Senate Bill 1804 Tryon/Boiling Springs Occupancy Tax.**

Halifax County (Part IV) (This provision is in the House Version

Halifax County is authorized to levy an occupancy tax at the rate of 3% and an additional tax of 2%. HB 945 amends the makeup of the Tourism Development Authority to require at least ½ (now ¾) of the members to be active in the promotion of travel and tourism, requires the County Board of Commissioners to designate one member of the TDA as chair and to determine any compensation to be paid to TDA members, and to provide the County Finance Officer will be the ex officio finance officer of the TDA. HB 945 also amends the reporting requirements of the TDA. **This language is in HB 2445 Halifax Occupancy Tax.**

Selma and Smithfield (Parts V and VI) (These provisions are in the House Version)

In 2001, the General Assembly authorized the towns of Selma and Smithfield to levy occupancy taxes at a rate of 1%. Selma and Smithfield are located in Johnston County, which is authorized to levy a 3% tax. HB 945 authorizes each town to levy an additional 1% tax, and, if enacted, the total amount levied

in each town would be 5% (when combined with the county rate). HB 945 also removes sunsets on both towns' taxes and makes other technical changes. These taxes fully conform to the guidelines.

Clay County (Part VII)

Clay County levies a 3% occupancy tax, the proceeds of which are deposited in a special Travel and Tourism Fund administered by the county and used only to promote tourism. HB 945 brings the administrative and use provisions into conformity with the occupancy tax guidelines, with the exception that a county TDA need only be established once the annual net proceeds exceed $150,000. Prior to reaching that threshold, the county would administer the proceeds

Clayton Advisory Referendum on Town Council (Part IX)

This part authorizes the Clayton Town Council to conduct an advisory referendum on whether the Town should amend the manner by which voters elect Council members. This part expired January 1, 2006. This language is in Senate Bill 1428, but with a later effective date.

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

H0945e3-SMLA

GENERAL ASSEMBLY OF NORTH CAROLINA
Session 2005

FISCAL ANALYSIS MEMORANDUM

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

DATE: June 20, 2006

TO: Reps. Luebke, Michaux, Miller and Wilkins

FROM: Rodney Bizzell
Fiscal Research Division

RE: House Bill (Unknown Edition)

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES:					
General Fund			No General Fund Impact		
Town of Benson	$8,200	$8,454	$8,649	$8,848	$9,051
Town of Boiling Springs	$14,782	$15,240	$15,591	$15,949	$16,316
Town of Kenly	$16,400	$16,777	$17,146	$17,489	$17,891
Clay County			No Fiscal Impact		
Halifax County			No Fiscal Impact		
Town of Selma	$66,947	$69,022	$70,610	$72,234	$73,895
Town of Smithfield	$32,465	$33,471	$34,241	$35,029	$35,834
Town of Clayton			No Fiscal Impact		

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Towns of Benson, Boiling Springs, Kenly, Selma, Smithfield and Clayton, Clay County and Halifax County.

EFFECTIVE DATE: Becomes effective when law.

BILL SUMMARY:

House Bill 945 authorizes the levy of new occupancy taxes in the towns of Benson (2%), Boiling Springs (3%) and Kenly (2%). It also authorizes an increase in occupancy taxes the towns of

Selma and Smithfield and amends administrative provisions of the existing Halifax and Clay County occupancy tax legislation. The bill also adds a provision authorizing the Town of Clayton to hold an advisory referendum on the method of election of town council.

ASSUMPTIONS AND METHODOLOGY:

Benson

According to the town manager of Benson, there are 2 motels located in the city limits. Assuming an average of 25 rooms, a 50% rate of occupancy and an average rate of $45 per night, the annual revenue for a 2% occupancy tax is approximately $8,200. Estimates for future years are based on the General Consumer Price Index rate of increase.

	Benson	Each 1%
FY07	$8,200	$4,100
FY08	$8,454	$4,227
FY09	$8,649	$4,324
FY10	$8,848	$4,424
FY11	$8,051	$4,526

Town of Boiling Springs

According to the Town of Boiling Springs, there is 1 motel in the city limits with approximately 50 rooms. Assuming an average room rate of $45 per night and a 60% rate of room occupancy, FRD estimates the 3% occupancy tax would generate $14,783 per year. Because no historic data is available, the General Consumer Price Index estimated rate of increase is used to estimate future growth in occupancy tax receipts. No development of additional motels or other accommodations is assumed in the estimates of subsequent year revenues.

	Boiling Springs	Each 1%
FY07	$14,782	$4,927
FY08	$15,240	$5,080
FY09	$15,591	$5,197
FY10	$15,949	$5,316
FY11	$16,316	$5,439

Kenly

According to the town manager of Kenly, there are 4 motels in Kenly. Assuming an average of 25 rooms each and a 50% rate of room occupancy, the annual revenue for a 2% occupancy tax is approximately $16,400. Estimates for future years are based on the General Consumer Price Index rate of increaser.

	Kenly	Each 1%
FY07	$16,400	$8,200
FY08	$16,777	$8,388
FY09	$17,146	$8,573
FY10	$17,489	$8,744
FY11	$17,891	$8,945

Selma

The current 1% occupancy tax in the Town of Selma generated $64,222 in FY05. Applying the general Consumer Price Index rate of increase suggests the following revenue stream as a result of the proposed 1% increase:

	Selma
FY07	$66,947
FY08	$69,022
FY09	$70,610
FY10	$72,234
FY11	$73,895

Smithfield

The 1% occupancy tax for the Town of Smithfield generated $31,144 in revenue during FY 2005. Applying the general Consumer Price Index rate of increase suggests the following revenue increase as a result of the proposed 1% rate increase:

	Smithfield
FY07	$32,465
FY08	$33,471
FY09	$34,241
FY10	$35,029
FY11	$35,834

Halifax County

House Bill 945 makes changes to the administrative procedures for the tourism and development authority for Halifax County and makes other technical changes, but does not have a fiscal impact.

Clay County

House Bill 945 brings the administrative and use provisions for Clay County into conformity with the occupancy tax guidelines, with the exception that a county TDA need only be established once the annual net proceeds exceed $150,000. Prior to reaching that threshold, the county would administer the proceeds. In FY 2005, Clay County received $17,752 in revenue from the 3% occupancy tax.

SOURCES OF DATA: Towns of Benson, Boiling Springs and Kenly, NC Department of Revenue.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☒ Senate Committee Substitute for

HB 945 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE LEVY OF ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAXES IN THE TOWNS OF BENSON, BOILING SPRINGS, AND KENLY, TO AMEND THE OCCUPANCY TAXES IN CLAY COUNTY, HALIFAX, SELMA, AND SMITHFIELD AND TO AUTHORIZE THE TOWN OF CLAYTON TO HOLD AN ADVISORY REFERENDUM ON ELECTING SOME MEMBERS OF ITS TOWN COUNCIL BY DISTRICT AND SOME AT LARGE.

☒ With recommendation that the House do not concur; request conferees.

(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 _____.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

HOUSE BILL 2445

Short Title:	Halifax Occupancy Tax.	(Local)
Sponsors:	Representatives L. Allen and Ed Jones (Primary Sponsors).	
Referred to:	Finance.	

May 24, 2006

A BILL TO BE ENTITLED

AN ACT TO AMEND THE OCCUPANCY TAX IN HALIFAX COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 377 of the 1987 Session Laws, as amended by S.L. 2005-46, reads as rewritten:

"**Section 1.** Occupancy ~~tax.~~Tax. – (a) Authorization and ~~scope.~~Scope. – The Halifax County Board of Commissioners may levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the county that is subject to sales tax imposed by the State under G.S 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

(a1) Authorization of ~~additional tax.~~Additional Tax. – In addition to the tax authorized by subsection (a) of this section, the Halifax County Board of Commissioners may levy an additional room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. The levy, collection, administration, and repeal of the tax authorized by this subsection ~~must~~shall be in accordance with the provisions of this section. Halifax County may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

(b) Administration. – A tax levied under this section ~~must~~shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

(c) Distribution and ~~use~~Use of ~~tax revenue.~~Tax Revenue. – Halifax County ~~must,~~shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Halifax County Tourism Development Authority. The Authority ~~must~~shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Halifax County and ~~must~~shall use the remainder for tourism-related expenditures.

The following definitions apply to this subsection:

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

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

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

"**Sec. 2.** Tourism Development Authority. – (a) Appointment and ~~membership.~~Membership. – When the Halifax County Board of Commissioners adopts a resolution levying a room occupancy tax under this act, it ~~must~~shall also adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution ~~must~~shall provide for the membership of the Authority including the members' qualifications and terms of office, and for the filling of vacancies on the Authority. At least one-fifth of the members must be individuals who are affiliated with businesses that collect the tax in the county, and at least ~~three-fourths~~one-half of the members must be individuals who are currently active in the promotion of travel and tourism in the county. ~~The Authority must designate one member as chair and one member as treasurer.~~The board of commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

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

(b) Duties. – The Authority must expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act. The Authority must promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

(c) Reports. – The Authority ~~must~~shall report quarterly and at the close of the fiscal year to the Halifax County Board of ~~County~~ Commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the Board may require.

"**Sec. 3.** This act is effective upon ratification."

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

HOUSE BILL 2445:
Halifax Occupancy Tax

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 22, 2006
Introduced by:	Reps. L. Allen, Ed Jones	**Summary by:**	Martha Walston
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 2445 was given a favorable report in the House Finance Subcommittee on Occupancy Tax. The bill amends the occupancy tax in Halifax County by making the following changes to the make-up of the Tourism Development Authority (TDA) and to the reporting requirements:

- ***Requires that at least one-half (now three-fourths) of the members of the TDA must be individuals who are currently active in the promotion of travel and tourism in the county.***
- ***Requires the Halifax County Board of Commissioner to designate one member of the TDA as chair and to determine the compensation, if any, to be paid to TDA members.***
- ***Provides that the Finance Officer for Halifax County will be the ex officio finance officer of the TDA.***
- ***Requires the TDA to report quarterly and at the close of the fiscal year to the County Commissioners on its receipts and expenditures for the preceding quarter and for the year. Current law requires the TDA to report only on its receipts and expenditures for the year at the close of the fiscal year.***

The bill also modernizes the language of the County's current authority.

CURRENT LAW: Halifax County has had the authority to levy a 3% occupancy tax since 1987. The proceeds are remitted to the Halifax TDA and used by the TDA to promote travel and tourism in Halifax County. In S.L. 2005-46, the General Assembly authorized Halifax County to levy an additional 2% occupancy tax, modernized the language of the County's authority and conformed the authority to the uniform guidelines, and specified the membership of the TDA to reflect its composition. The membership of the TDA is as follows: at least 1/5 of the members must be individuals who are affiliated with businesses that collect the tax in the county and at least ¾ of the members must be individuals who are currently active in the promotion of travel and tourism in the county.

BILL ANALYSIS: House Bill 2445 amends the makeup of the TDA to conform to the guidelines by requiring at least one-half of the members to be individuals who are currently active in the promotion of travel and tourism in the County. The Board of County Commissioner must also designate one member of the TDA as chair and determine any compensation to be paid to the member of the TDA. The Finance Officer for the County shall be the ex officio finance officer of the TDA, and the TDA must report quarterly to the Board of County Commissioners.

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

BACKGROUND: Since 1983, the General Assembly has authorized many units of local government to levy a room occupancy tax. In several instances, the General Assembly has authorized both a county and a city within that county to impose an occupancy tax. The rate of tax, the use of the tax proceeds, the administration of the tax, and the body with the authority to determine how the tax proceeds will be spent

vary considerably. Over the past several years, there has been a greater effort to make the occupancy taxes uniform. In 1997, the General Assembly enacted uniform municipal and county administrative provisions for occupancy tax legislation – G.S. 153A-155 and G.S. 160A-215. These provisions provide uniformity in the areas of levy, administration, collection, repeal, and penalties.

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

UNIFORM OCCUPANCY TAX PROVISIONS
Rate – The county tax rate cannot exceed 6% and the city tax rate, when combined with the county rate, cannot exceed 6%.
Use – Two-thirds of the proceeds must be used to promote travel and tourism and the remainder must be used for tourism related expenditures.
Definitions The term "net proceeds", "promote travel and tourism", and "tourism related expenditures" are defined terms.
Administration – The net revenues must be administered by a local tourism development authority that has the authority to determine how the tax proceeds will be used, is created by a local ordinance, and at least ½ of the members must be currently active in the promotion of travel and tourism in the county and 1/3 of the members must be affiliated with organizations that collect the tax.
Costs of Collection – The taxing authority may retain from the revenues its actual costs of collection, not to exceed 3% of the first $500,000 collected each year plus 1% of the remainder collected each year.

H2445e1-SMLA

GENERAL ASSEMBLY OF NORTH CAROLINA
Session 2005

FISCAL ANALYSIS MEMORANDUM

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

DATE: June 21, 2006

TO: Rep. Allen, Rep. Jones

FROM: Rodney Bizzell
Fiscal Research Division

RE: House Bill 2445 (Unknown Edition)

FISCAL IMPACT

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

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES:					
EXPENDITURES:					
POSITIONS (cumulative):					

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

EFFECTIVE DATE: Becomes effective when law.

BILL SUMMARY:

HB 2445 amends the Halifax County occupancy tax authorizing legislation to provide that half of the members of the Tourism Development Authority must be active in promotion of travel and tourism in the county, that the county board of commissioners are to designate the chair of the Authority and set the compensation (if any) to be paid to authority members, and that the county finance officer is to serve as the finance officer for the Authority. Requires quarterly reports from Authority to board of county commissioners.

Source: Bill Digest H.B. 2445 (05/23/0200)

ASSUMPTIONS AND METHODOLOGY:
The bill amends administrative provisions of the existing Halifax County occupancy tax legislation, but does not change the rate of tax and has no fiscal impact.

SOURCES OF DATA:

TECHNICAL CONSIDERATIONS: None

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☐ Committee Substitute for

HB 2445 A BILL TO BE ENTITLED AN ACT TO AMEND THE OCCUPANCY TAX IN HALIFAX COUNTY.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H 1

HOUSE BILL 2477*

Short Title:	Durham County Occupancy Tax Modification.	(Local)
Sponsors:	Representative Miller.	
Referred to:	Finance.	

May 24, 2006

A BILL TO BE ENTITLED

AN ACT AMENDING THE DURHAM COUNTY ROOM OCCUPANCY TAX PROVISIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 7(a) of S.L. 2001-480, as amended by Section 1 of S.L. 2002-36 and Section 4.1 of S.L. 2005-233, reads as rewritten:

"**SECTION 7.(a)** If a plan for financing a Performing Arts Theater has not been approved by the Durham City Council and has been disapproved by the Durham County Commissioners within ~~54~~ 64 months after the levy of the one percent (1%) tax authorized under Section 6(c) of this act, the county's authority to levy the one percent (1%) tax described under Section 6(c) of this act and the levy of the one percent (1%) tax described in this subsection are repealed on the first day of the second month following the ~~54-month~~64-month period.

If construction on the Performing Arts Theater has not begun within ~~54~~ 64 months after the levy of the one percent (1%) tax authorized under Section 6(c) of this act, the county's authority to levy the one percent (1%) tax described in Section 6(c) of this act and the levy of the one percent (1%) tax described in Section 6(c) of this act are repealed on the first day of the second month following the ~~54-month~~64-month period.

It is the goal of the General Assembly that a plan for financing the Performing Arts Theater shall be adopted within ~~54~~ 64 months after the levy of the one percent (1%) tax authorized under Section 6(c) of this act, and construction of the Performing Arts Theater shall begin within ~~54~~ 64 months of the levy of the one percent (1%) tax described in Section 6(c) of this act.

Any funds collected but not spent before the repeal date shall be redistributed to the Durham Convention and Visitors Bureau to promote travel and tourism."

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

HOUSE BILL 2477:
Durham County Occupancy Tax Modification

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 22, 2006
Introduced by:	Rep. Miller	**Summary by:**	Martha Walston
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 2477 amends the Durham County occupancy tax to extend the period of time allowed for the City of Durham to plan, approve and begin construction on a performing arts theater using proceeds from the final 1% occupancy tax.

HB 2477 was given a favorable report in the House Finance Subcommittee on Occupancy Tax.

CURRENT LAW: Currently, Durham County has the authority to levy a three percent (3%), two percent (2%), and one percent (1%) occupancy tax, for a total of six percent (6%). Durham County and the City of Durham share the proceeds of part of the tax. The continued authorization of the final one percent (1%) occupancy tax is conditioned upon the development of a plan for paying for and constructing a performing arts theater. The legislation requires that the Durham City Council develop a plan for financing the theater within 54 months of Durham County voting to levy the one percent (1%) tax. Additionally, construction of the theater must have begun with 54 months of the levy of the one percent (1%) tax. Once the tax has been levied for 24 months, the first one million four hundred thousand dollars ($1,400,000) of the net proceeds must be used to finance the debt associated with the construction of the performing art theater and for the design and engineering costs of the theater. But no more that two million seven hundred fifty-two thousand dollars ($2,752,000) of those proceeds may be used for the design and engineering costs.. If the financing is not established and construction has not begun within 54 months of the levy of the tax, the authority to levy the 1% tax is repealed.

BILL ANALYSIS: House Bill 2477 amends the Durham County Occupancy tax by allowing the City of Durham more time to plan and construct the performing arts theater. It gives the City 64 months (5 years and 4 months) to plan and begin construction of the performing arts theater, and the 1% will not automatically be repealed until that time.

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

BACKGROUND: The current version of the Durham County occupancy tax legislation was created in 2001 and revised in 2002 and 2005.[1] The city and county split the proceeds of the first 3% of the tax and may use the money for any purpose authorized by law. The second 2% of the tax is distributed to the Convention and Visitors Bureau, which acts as a Tourism Development Authority. The final 1% tax is distributed in several different ways during the initial 24 months of the levy of the tax. After the initial 24 months, the proceeds from the 1% tax may be used to finance the debt associated with building a performing arts center, to improve the Museum of Life and Science, and to promote travel and tourism. This allocation does not comply with House guidelines, but were reached by consensus during the 2001 session.

UNIFORM OCCUPANCY TAX PROVISIONS
Rate – The county tax rate cannot exceed 6% and the city tax rate, when combined with the county rate, cannot exceed 6%.

[1] In S.L. 2005-233, the General Assembly extended the time to construct and plan the performing arts theater from 42 months to 54 months and modified how the proceeds of the tax were to be used.

Use – Two-thirds of the proceeds must be used to promote travel and tourism and the remainder must be used for tourism related expenditures.
Definitions The term "net proceeds", "promote travel and tourism", and "tourism related expenditures" are defined terms.
Administration – The net revenues must be administered by a local tourism development authority that has the authority to determine how the tax proceeds will be used, is created by a local ordinance, and at least 1/2 of the members must be currently active in the promotion of travel and tourism in the county and 1/3 of the members must be affiliated with organizations that collect the tax.
Costs of Collection – The taxing authority may retain from the revenues its actual costs of collection, not to exceed 3% of the first $500,000 collected each year plus 1% of the remainder collected each year.

H2477e1-SMLA

GENERAL ASSEMBLY OF NORTH CAROLINA
Session 2005

FISCAL ANALYSIS MEMORANDUM

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

DATE: June 20, 2006

TO: Rep. Miller

FROM: Rodney Bizzell
Fiscal Research Division

RE: House Bill 2477 (First Edition)

FISCAL IMPACT

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

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES:					
Durham County	**No Change in Fiscal Impact**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: City of Durham and Durham County

EFFECTIVE DATE: Becomes effective when law.

BILL SUMMARY:
House Bill 2477 amends the Durham County occupancy tax to extend the period of time allowed for the City of Durham to plan, approve and begin construction on a performing arts theater using proceeds from the final 1% occupancy tax.

ASSUMPTIONS AND METHODOLOGY:

Because the bill does not change the tax rate for the Durham County occupancy tax and only makes changes related to the time allowed for planning and construction of a performing arts center and the use of the proceeds, this bill does not change the fiscal impact for the Durham occupancy tax.

SOURCES OF DATA:

TECHNICAL CONSIDERATIONS: None

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☐ Committee Substitute for

HB 2477 A BILL TO BE ENTITLED AN ACT AMENDING THE DURHAM COUNTY ROOM OCCUPANCY TAX PROVISIONS.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S 2

SENATE BILL 1506
Finance Committee Substitute Adopted 6/1/06

Short Title: Additional St. Pauls Occupancy Tax. (Local)

Sponsors:

Referred to:

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE TOWN OF ST. PAULS TO LEVY AN ADDITIONAL ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Section 1 of S.L. 1998-112 is amended by adding a new subsection to read:

"(a1) Authorization of additional tax. In addition to the tax authorized by subsection (a) of this section, the board of commissioners of the Town of St. Pauls may levy an additional room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. The levy, collection, administration, use, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this section. St. Pauls may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section."

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

SENATE BILL 1506:
Additional St. Pauls Occupancy Tax

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 22, 2006
Introduced by:	Sen. Weinstein	**Summary by:**	Martha Walston
Version:	Second Edition		Committee Counsel

SUMMARY: ***Senate Bill 1506 authorizes the Town of St. Pauls to levy an additional 2% room occupancy tax. Two-thirds of the proceeds would be used to promote travel and tourism and one-third would be used for tourism-related expenditures. This bill conforms to the guidelines supported by the North Carolina Travel and Tourism Coalition and adhered to by the House Finance Committee.***

The 2nd edition makes one minor technical change by adding the term "use" on line 11.

SB 1506 was given a favorable report in the House Finance Subcommittee on Occupancy Tax.

CURRENT LAW: In 1998, the General Assembly authorized the Town of St. to levy a 1% room occupancy tax. Currently, the proceeds are remitted to the St. Pauls Tourism Development Authority, which is required to spend at least two-thirds of the proceeds on tourism promotion and the remainder on tourism-related expenditures. The town is located in Robeson County, which does not have authority to levy a room occupancy tax.

BILL ANALYSIS: Senate Bill 1506 authorizes the Town of St. Pauls to levy an additional 2% room occupancy tax, for a total rate of up to 3%. The proceeds must be remitted to a town Tourism Development Authority (TDA), which must use at least two-thirds of the proceeds to promote travel and the remainder for tourism-related expenditures. These administrative and use provisions conform to the uniform guidelines referenced above and detailed in the chart below:

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

BACKGROUND: Since 1983, the General Assembly has authorized many units of local government to levy a room occupancy tax. In several instances, the General Assembly has authorized both a county and a city within that county to impose an occupancy tax. The rate of tax, the use of the tax proceeds, the administration of the tax, and the body with the authority to determine how the tax proceeds will be spent vary considerably. Over the past several years, there has been a greater effort to make the occupancy taxes

[1] In 2005, the percentage of members that must be currently active in the promotion of travel and tourism was changed from ¾ to ½.

uniform. In 1997, the General Assembly enacted uniform municipal and county administrative provisions for occupancy tax legislation – G.S. 153A-155 and G.S. 160A-215. These provisions provide uniformity in the areas of levy, administration, collection, repeal, and penalties.

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

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

Trina Griffin,, counsel to Senate Finance, substantially contributed to this summary.

S1506e2-SMLA

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: Senate Bill 1506 (Second Edition)

SHORT TITLE: Additional St. Pauls Occupancy Tax.

SPONSOR(S): Senator Weinstein

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES:					
Town of St. Pauls	$11,388	$11,741	$12,011	$12,287	$12,569

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Town of St. Pauls

EFFECTIVE DATE: Becomes effective when law.

BILL SUMMARY: SB1506 authorizes the Town of St. Pauls to levy an additional 2% room occupancy tax. Two-thirds of the proceeds would be used to promote travel and tourism and one-third would be used for tourism-related expenditures. This bill conforms to the guidelines supported by the North Carolina Travel and Tourism Coalition and adhered to by the House Finance Committee.

ASSUMPTIONS AND METHODOLOGY: The Town of St. Pauls has one hotel. It is estimated that the 2% occupancy tax would generate approximately $11,000 annually. This estimate assumes 40 rooms with an average rate of $65 per night and a 60% occupancy rate. The general Consumer Price Index is used to estimate growth in the tax for future years.

SOURCES OF DATA: NC Dept. of Commerce

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Rodney Bizzell

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

Official
Fiscal Research Division
Publication

DATE: June 2, 2006

Signed Copy Located in the NCGA Principal Clerk's Offices

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☒Committee Substitute for

SB 1506 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE TOWN OF ST. PAULS TO LEVY AN ADDITIONAL ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

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

ATTACHMENT 7

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 2259
PROPOSED COMMITTEE SUBSTITUTE H2259-CSMCx-6 [v.2]

6/21/2006 2:51:23 PM

Short Title: Elkin/Pilot Mountain/Dobson Occupancy Tax. (Local)

Sponsors:

Referred to:

May 22, 2006

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE TOWNS OF ELKIN, PILOT MOUNTAIN, AND DOBSON TO LEVY A SIX PERCENT ROOM OCCUPANCY TAX.

The General Assembly of North Carolina enacts:

PART I. ELKIN OCCUPANCY TAX

SECTION 1.1 Occupancy Tax. – (a) Authorization and Scope. – The Elkin Town Council may levy a room occupancy tax of up to six percent (6%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 1.1(b) Administration. – A tax levied under this act shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 1.1(c) Distribution and Use of Tax Revenue. – The Town of Elkin shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Elkin Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this section to promote travel and tourism in Elkin and shall use the remainder for tourism-related expenditures.

The following definitions apply in this act:

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

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

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

SECTION 1.2 Elkin Tourism Development Authority. – (a) Appointment and Membership. – When the Elkin Town Council adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a town Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals affiliated with businesses that collect the tax in the town, and at least one-half of the members must be individuals currently active in the promotion of travel and tourism in the town. The town council shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

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

SECTION 1.2(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this Part for the purposes provided in this Part. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

SECTION 1.2(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Elkin Town Council on its receipts and expenditures for the preceding quarter and for the year in such detail as the town council may require.

PART II. PILOT MOUNTAIN OCCUPANCY TAX

SECTION 2.1 Occupancy Tax. – (a) Authorization and Scope. – The Pilot Mountain Board of Commissioners may levy a room occupancy tax of up to six percent (6%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 2.1(b) Administration. – A tax levied under this act shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 2.1(c) Distribution and Use of Tax Revenue. – The Town of Pilot Mountain shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Pilot Mountain Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this section to promote travel and tourism in Pilot Mountain and shall use the remainder for tourism-related expenditures.

The following definitions apply in this act:

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

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

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

SECTION 2.2 Pilot Mountain Tourism Development Authority. – (a) Appointment and Membership. – When the Pilot Mountain Board of Commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a town Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals affiliated with businesses that collect the tax in the town, and at least one-half of the members must be individuals currently active in the promotion of travel and tourism in the town. The Board of Commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

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

SECTION 2.2(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this Part for the purposes provided in this Part. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

SECTION 2.2(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Pilot Mountain Board of Commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the Board of Commissioners may require.

PART III. DOBSON OCCUPANCY TAX

SECTION 3.1 Occupancy Tax. – (a) Authorization and Scope. – The Dobson Board of Commissioners may levy a room occupancy tax of up to six percent (6%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 3.1(b) Administration. – A tax levied under this act shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 3.1(c) Distribution and Use of Tax Revenue. – The Town of Dobson shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Dobson Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this section to promote travel and tourism in Dobson and shall use the remainder for tourism-related expenditures.

The following definitions apply in this act:

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

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

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

SECTION 3.2 Dobson Tourism Development Authority. – (a) Appointment and Membership. – When the Dobson Board of Commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a town Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals affiliated with businesses that collect the tax in the town, and at least one-half of the members must be individuals currently active in the promotion of travel and tourism in the town. The Board of Commissioners shall designate one member of the Authority as

chair and shall determine the compensation, if any, to be paid to members of the Authority.

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

SECTION 3.2(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this Part for the purposes provided in this Part. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

SECTION 3.2(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Dobson Board of Commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the Board of Commissioners may require.

PART IV. ADMINISTRATIVE PROVISIONS

SECTION 4. Administrative provisions. – G.S. 160A-215(g) reads as rewritten:

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

PART V. EFFECTIVE DATE

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 2259

Short Title:	Elkin Occupancy Tax.	(Local)
Sponsors:	Representative Harrell.	
Referred to:	Finance.	

May 22, 2006

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE TOWN OF ELKIN TO LEVY A SIX PERCENT ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Occupancy Tax. – (a) Authorization and Scope. – The Elkin Town Council may levy a room occupancy tax of up to six percent (6%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 2. Administration. – A tax levied under this act shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 3. Distribution and Use of Tax Revenue. – The Town of Elkin shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Elkin Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this section to promote travel and tourism in Elkin and shall use the remainder for tourism-related expenditures.

The following definitions apply in this act:

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

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract

tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

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

SECTION 4. Elkin Tourism Development Authority. – (a) Appointment and Membership. – When the Elkin Town Council adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a town Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals affiliated with businesses that collect the tax in the town, and at least one-half of the members must be individuals currently active in the promotion of travel and tourism in the town. The town council shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

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

SECTION 5. Duties. – The Authority shall expend the net proceeds of the tax levied under this Part for the purposes provided in this Part. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

SECTION 6. Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Elkin Town Council on its receipts and expenditures for the preceding quarter and for the year in such detail as the town council may require.

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

HOUSE BILL 2259:
Elkin/Pilot Mountain/Dobson Occupancy Tax

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 19, 2006
Introduced by:	Rep. Harrell	**Summary by:**	Martha Walston
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 2259 authorizes the Town of Elkin, the Town of Pilot Mountain, and the Town of Dobson to each levy a 6% room occupancy tax. Two-thirds of the proceeds would be used to promote travel and tourism and one-third would be used for tourism-related expenditures. This bill conforms to the guidelines supported by the North Carolina Travel and Tourism Coalition and adhered to by the House Finance Committee.

CURRENT LAW: Neither the Town of Elkin, the Town of Pilot Mountain, nor the Town of Dobson currently has the authority to levy a room occupancy tax. These towns are located in Surry County, which also has no authority to levy an occupancy tax. Under HB 2259, the Town of Elkin, the Town of Pilot Mountain, and the Town of Dobson would each be authorized to levy a room occupancy tax of up to 6%.

BILL ANALYSIS: HB 2259 authorizes the Town of Elkin, the Town of Pilot Mountain, and the Town of Dobson to each levy a room occupancy tax of up to 6%. The proceeds must be remitted, respectively, to the Elkin Tourism Development Authority (TDA), to the Pilot Mountain Tourism Development Authority, and the Dobson Tourism Development Authority, each of which must use at least two-thirds of the proceeds to promote travel and tourism and the remainder for tourism-related expenditures. These administrative and use provisions conform to the uniform guidelines reference above and detailed in the chart below:

UNIFORM OCCUPANCY TAX PROVISIONS
Rate – The county tax rate cannot exceed 6% and the city tax rate, when combined with the county rate, cannot exceed 6%.
Use – Two-thirds of the proceeds must be used to promote travel and tourism and the remainder must be used for tourism related expenditures.
Definitions The term "net proceeds", "promote travel and tourism", and "tourism related expenditures" are defined terms.
Administration – The net revenues must be administered by a local tourism development authority that has the authority to determine how the tax proceeds will be used, is created by a local ordinance, and at least 1/2 of the members must be currently active in the promotion of travel and tourism in the county and 1/3 of the members must be affiliated with organizations that collect the tax.
Costs of Collection – The taxing authority may retain from the revenues its actual costs of collection, not to exceed 3% of the first $500,000 collected each year plus 1% of the remainder collected each year.

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

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

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

H2259e1-SMLA

GENERAL ASSEMBLY OF NORTH CAROLINA
Session 2005

FISCAL ANALYSIS MEMORANDUM

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

DATE: June 20, 2006

TO: Rep. Harrell

FROM: Rodney Bizzell
Fiscal Research Division

RE: PCS HB 2259

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES:					
Town of Elkin	$19,710	$20,321	$20,788	$21,267	$21,756
Town of Pilot Mountain	$50,000	$51,550	$52,736	$53,949	$55,189

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Towns of Elkin and Pilot Mountain

EFFECTIVE DATE: Becomes effective when law.

BILL SUMMARY:

HB 2259 authorizes the Town of Elkin to levy a 6% room occupancy tax. The PCS also authorizes the Town of Pilot Mountain to levy a 6% room occupancy tax. Two-thirds of the proceeds would be used to promote travel and tourism and one-third would be used for tourism-related expenditures.

ASSUMPTIONS AND METHODOLOGY:

Town of Elkin

SB 339 would authorize the Town of Elkin to levy a 6% occupancy tax. According to the Town of Elkin, there is currently 1 bed and breakfast with 3 rooms, and 1 motel with 25-30 rooms in the town limits of Elkin. Assuming an average room rate of $50 per night and a room occupancy rate

of 60%, the 6% tax would generate approximately $19,710. Because no historic data is available, the General Consumer Price Index estimated rate of increase is used to estimate future growth in occupancy tax receipts. No development of additional motels or other accommodations is assumed in the estimates of subsequent year revenues.

Fiscal Year	Proposed 6% Tax	Each 1%
2006-07	$19,710	$3,285
2007-08	$20,321	$3,387
2008-09	$20,788	$3,465
2009-10	$21,267	$3,544
2010-11	$21,756	$3,626

Town of Pilot Mountain
The Town of Pilot Mountain estimates that the proposed 6% occupancy tax would generate approximately $50,000 annually. Because no historic data is available, the General Consumer Price Index estimated rate of increase is used to estimate future growth in occupancy tax receipts.

SOURCES OF DATA: Towns of Elkin and Pilot Mountain

TECHNICAL CONSIDERATIONS: None

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☐ Committee Substitute for

HB 2259 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE TOWN OF ELKIN TO LEVY A SIX PERCENT ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

☒ With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

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

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1431
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1431-CSLA-42 [v.1]

6/21/2006 10:34:25 AM

Short Title: Burgaw Occupancy Tax. (Local)

Sponsors:

Referred to:

May 17, 2006

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE TOWN OF BURGAW TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Occupancy tax. – (a) Authorization and Scope. – The Board of Commissioners of the Town of Burgaw may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 1.(c) Distribution and Use of Tax Revenue. – The Town of Burgaw shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Burgaw Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Burgaw and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

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

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct

market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

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

SECTION 2. Tourism Development Authority. – (a) Appointment and Membership. – When the Board of Commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating the Burgaw Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members shall be individuals who are affiliated with businesses that collect the tax in the town and at least one-half of the members shall be individuals who are currently active in the promotion of travel and tourism in the town. The Board of Commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

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

SECTION 2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

SECTION 2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Board of Commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the Board of Commissioners may require.

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 1431

Short Title:	Burgaw Occupancy Tax.	(Local)
Sponsors:	Senator Soles.	
Referred to:	Finance.	

May 17, 2006

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE TOWN OF BURGAW TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Occupancy tax. – (a) Authorization and Scope. – The Board of Commissioners of the Town of Burgaw may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 1.(c) Distribution and Use of Tax Revenue. – The Town of Burgaw shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Burgaw Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Burgaw and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

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

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract

tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

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

SECTION 2. Tourism Development Authority. – (a) Appointment and Membership. – When the Board of Commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating the Burgaw Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members shall be individuals who are affiliated with businesses that collect the tax in the town and at least three-fourths of the members shall be individuals who are currently active in the promotion of travel and tourism in the town. The Board of Commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

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

SECTION 2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

SECTION 2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Board of Commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the Board of Commissioners may require.

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

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

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

SENATE BILL 1431:
Burgaw Occupancy Tax

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 22, 2006
Introduced by:	Sen. Soles	**Summary by:**	Martha Walston Committee Counsel
Version:	Proposed Committee Substitute to First Edition		

SUMMARY: Senate Bill 1431 authorizes the Town of Burgaw to levy a 3% room occupancy tax. Two-thirds of the proceeds would be used to promote travel and tourism and one-third would be used for tourism-related expenditures.

The proposed committee substitute amends the makeup of the TDA to conform to the guidelines supported by the North Carolina Travel and Tourism Coalition and adhered to by the House Finance Committee

The proposed committee substitute was given a favorable report in the House Finance Subcommittee on Occupancy Tax.

CURRENT LAW: The Town of Burgaw currently has no authority to levy a room occupancy tax. It is located in Pender County, which is authorized to levy a 3% tax. Under this bill, the total rate of occupancy tax in the Town of Burgaw would be 6%.

BILL ANALYSIS: Senate Bill 1431 authorizes the Town of Burgaw to levy a room occupancy tax of up to 3%. The proceeds must be remitted to a town Tourism Development Authority (TDA), which must use at least two-thirds of the proceeds to promote travel and tourism and the remainder for tourism-related expenditures. These administrative and use provisions conform to the uniform guidelines referenced above and detailed in the chart below:

UNIFORM OCCUPANCY TAX PROVISIONS
Rate – The county tax rate cannot exceed 6% and the city tax rate, when combined with the county rate, cannot exceed 6%.
Use – Two-thirds of the proceeds must be used to promote travel and tourism and the remainder must be used for tourism related expenditures.
Definitions The term "net proceeds", "promote travel and tourism", and "tourism related expenditures" are defined terms.
Administration – The net revenues must be administered by a local tourism development authority that has the authority to determine how the tax proceeds will be used, is created by a local ordinance, and at least 1/2 of the members must be currently active in the promotion of travel and tourism in the county and 1/3 of the members must be affiliated with organizations that collect the tax.
Costs of Collection – The taxing authority may retain from the revenues its actual costs of collection, not to exceed 3% of the first $500,000 collected each year plus 1% of the remainder collected each year.

BACKGROUND: Since 1983, the General Assembly has authorized many units of local government to levy a room occupancy tax. In several instances, the General Assembly has authorized both a county and a city within that county to impose an occupancy tax. The rate of tax, the use of the tax proceeds, the administration of the tax, and the body with the authority to determine how the tax proceeds will be spent vary considerably. Over the past several years, there has been a greater effort to make the occupancy taxes uniform. In 1997, the General Assembly enacted uniform municipal and county administrative provisions

for occupancy tax legislation – G.S. 153A-155 and G.S. 160A-215. These provisions provide uniformity in the areas of levy, administration, collection, repeal, and penalties.

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

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

S1431e1-SMLA

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: Senate Bill 1431 (First Edition)

SHORT TITLE: Burgaw Occupancy Tax.

SPONSOR(S): Senator Soles

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES:					
Town of Burgaw	**$6,570**	**$6,773**	**$6,929**	**$7,088**	**$7,251**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Town of Burgaw

EFFECTIVE DATE: Becomes effective when law.

BILL SUMMARY:
Senate Bill 1431 authorizes the Town of Burgaw to levy a 3% room occupancy tax. Two-thirds of the proceeds would be used to promote travel and tourism and one-third would be used for tourism-related expenditures. This bill conforms to the guidelines supported by the North Carolina Travel and Tourism Coalition and adhered to by the House Finance Committee.

ASSUMPTIONS AND METHODOLOGY:
Based on information from Pender County, there is one motel in the Town of Burgaw. Assuming 25 rooms, an average rate of $40 per night and a 60% occupancy rate, the 3% occupancy tax would generate approximately $6,570 annually. The general rate for the Consumer Price Index is used to determine the rate of growth in the tax collections for future years.

SOURCES OF DATA:
Pender County

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Rodney Bizzell

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: May 31, 2006

Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 2

SENATE BILL 1328
Finance Committee Substitute Adopted 6/8/06

Short Title: Regulate Golf Carts/Saluda & Faison. (Local)

Sponsors:

Referred to:

May 15, 2006

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CITY OF SALUDA AND THE TOWN OF FAISON TO REGULATE GOLF CARTS ON PUBLIC STREETS OR HIGHWAYS WITHIN THE CITY OR ON PROPERTY OWNED OR LEASED BY THE CITY.

The General Assembly of North Carolina enacts:

SECTION 1. This act applies to the City of Saluda and the Town of Faison only.

SECTION 2. Notwithstanding the provisions of G.S. 20-50 and G.S. 20-54, a town may, by ordinance, regulate the operation of golf carts on any public street or highway within the city limits, or on any property owned or leased by the city.

By ordinance, a city may require the registration of golf carts, charge a fee for the registration, specify who is authorized to operate golf carts, and specify the required equipment, load limits, and the hours and methods of operation of golf carts.

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

SENATE BILL 1328:
Regulate Golf Carts/Saluda & Faison

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 22, 2006
Introduced by:	Sen. Apodaca	**Summary by:**	Judy Collier
Version:	Second Edition		Research Assistant

SUMMARY: ***Senate Bill 1328 authorizes the City of Saluda and the Town of Faison to regulate the operation of golf carts on public streets or highways within the city, as well as on any property owned or leased by the city, and it allows the city to charge a fee for registration. The bill becomes effective when it becomes law. The Proposed Committee Substitute (PCS) to the First Edition of the bill received a favorable report from Senate Finance Committee on June 8, 2006.***

CURRENT LAW: Under current law, vehicles intended to be operated on the streets and highways of the State must be registered (G.S. 20-50). Golf carts may not be registered (G.S. 20-54), and therefore may not operate on the streets and highways.

G.S. 20-4.01.(12a) defines a golf cart as a vehicle designed and manufactured for operation on a golf course for sporting or recreational purposes and that is not capable of exceeding speeds of 20 miles per hour.

BILL ANALYSIS: Senate Bill 1328 applies to the City of Saluda and the Town of Faison only.

It allows the named municipalities to enact an ordinance to regulate the operation of golf carts on any public street or highway within the city limits, or on any property owned or leased by the city. With regard to golf carts, by ordinance, each town or city may:

- require registration,
- charge a fee for the registration,
- specify the persons authorized to operate,
- specify required equipment,
- specify load limits, and
- specify hours and methods of operation.

The bill becomes effective when it becomes law.

BACKGROUND:

- The General Assembly has enacted legislation for golf carts in the following locations: Lake Waccamaw (S.L. 2001-356), Cary (S.L. 2001-485), Whispering Pines (S.L. 2002-82), Seven Lakes (S.L. 2002-82), and Caswell Beach (S.L. 2005-58).
- The General Assembly has enacted legislation for golf carts and utility vehicles in: Beech Mountain (S.L. 2003-124) and Seven Devils (S.L. 2004-58).
- The General Assembly has enacted similar golf cart legislation allowing fees to be charged in: the Town of Lake Waccamaw (S.L. 2001-356); the Village of Bald Head Island (S.L. 2002-129); and the Towns of Elizabethtown, Rose Hill, and Bladenboro (S.L. 2005-11).

S1328e2-SMRE

**Theresa Matula, Committee Staff to the Senate State & Local Government Committee substantially contributed to this summary.*

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☒Committee Substitute for

SB 1328 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE CITY OF SALUDA AND THE TOWN OF FAISON TO REGULATE GOLF CARTS ON PUBLIC STREETS OR HIGHWAYS WITHIN THE CITY OR ON PROPERTY OWNED OR LEASED BY THE CITY.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S 1

SENATE BILL 1512

Short Title:	Increase Parking Fines.	(Local)
Sponsors:	Senator Atwater.	
Referred to:	State and Local Government.	

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO RAISE THE FINE FOR OVERTIME PARKING FROM FIVE DOLLARS TO NO MORE THAN FIFTY DOLLARS IN THE CITY OF SANFORD.

The General Assembly of North Carolina enacts:

SECTION 1. This act applies to the City of Sanford only.

SECTION 2. G.S. 20-162.1(a) reads as rewritten:

"(a) Whenever evidence shall be presented in any court of the fact that any automobile, truck, or other vehicle was found upon any street, alley or other public place contrary to and in violation of the provisions of any statute or of any municipal or Department of Transportation ordinance limiting the time during which any such vehicle may be parked or prohibiting or otherwise regulating the parking of any such vehicle, it shall be prima facie evidence in any court in the State of North Carolina that such vehicle was parked and left upon such street, alley or public way or place by the person, firm or corporation in whose name such vehicle is then registered and licensed according to the records of the department or agency of the State of North Carolina, by whatever name designated, which is empowered to register such vehicles and to issue licenses for their operation upon the streets and highways of this State; provided, that no evidence tendered or presented under the authorization contained in this section shall be admissible or competent in any respect in any court or tribunal, except in cases concerned solely with violation of statutes or ordinances limiting, prohibiting or otherwise regulating the parking of automobiles or other vehicles upon public streets, highways, or other public places.

Any person found responsible for an infraction pursuant to this section shall be subject to a penalty of not more than ~~five dollars ($5.00).~~fifty dollars ($50.00)."

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

SENATE BILL 1512:
Increase Parking Fines

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 22, 2006
Introduced by:	Sen. Atwater	**Summary by:**	Martha Walston Committee Counsel
Version:	First Edition		

SUMMARY: Senate Bill 1512 is a local bill that would increase the parking fine for the city of Sanford from a penalty of not more than $5 to a penalty of not more than $50. The bill was given a favorable report in Senate State and Local Government..

CURRENT LAW: Under G.S. 20-162.1, a person found responsible for violating a provision of any statute or of any municipal or Department of Transportation ordinance regulating parking is subject to a penalty of not more than $5. Several counties and towns have modified this statute's application

BILL ANALYSIS: SB 1512 would increase the maximum penalty to $50 in the city of Sanford.

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

S1512e1-SMLA

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☐ Committee Substitute for

SB 1512 A BILL TO BE ENTITLED AN ACT TO RAISE THE FINE FOR OVERTIME PARKING FROM FIVE DOLLARS TO NO MORE THAN FIFTY DOLLARS IN THE CITY OF SANFORD.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 1526

Short Title:	Reidsville Deannexation.	(Local)
Sponsors:	Senator Berger of Rockingham.	
Referred to:	Finance.	

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO REMOVE CERTAIN DESCRIBED PROPERTY FROM THE CORPORATE LIMITS OF THE CITY OF REIDSVILLE.

The General Assembly of North Carolina enacts:

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

Beginning at a point in the eastern right-of-way of McCoy Road (SR-2437, formerly Port McCoy Rd), said point being northeasterly approximately 0.1 mi. from the intersection of Pin Tail Drive (SR-2938) and McCoy Road, said point also being a corner between Dora D. Martin and The City of Reidsville (formerly Raymond C. Snipes), thence along their lines the following six calls, S 61 deg. 01 sec. 22 min. E 300.26 ft., S 28 deg. 58 min. 38 sec. W 75.00 ft., S 46 deg. 31 min. 22 sec. E 93.87 ft., S 18 deg. 25 min. 05 sec. W 39.44 ft., S 42 deg. 22 min. 25 sec. E 385.78 ft. and S 04 deg.39 min. 31 sec. W 166.20 ft. to an iron, thence N 61 deg. 01 min. 22 sec. W 854.14 ft to an Iron in the eastern right-of-way of McCoy Road, thence with the eastern right-of-way of McCoy Road N 28 deg. 58 min. 38 sec. E 400.00 ft. to the point of beginning and Being that 5.51 ac.+/- parcel as shown on a survey as prepared by Southern Mapping and Engineering Company dated March, 1973 and recorded with an Order of Confirmation and Consent Judgment recorded in the Rockingham County Clerk of Court, File No. 73 SP65.

SECTION 2. This act is effective from and after April 13, 1994.

SENATE BILL 1526:
Reidsville Deannexation

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 22, 2006
Introduced by:	Sen. Berger of Rockingham	**Summary by:**	Judy Collier
Version:	First Edition		Research Assistant

SUMMARY: Senate Bill 1526 de-annexes a 5.51 acre parcel from the corporate limits of the City of Reidsville. The act becomes effective from and after April 13, 1994. SB 1526 received a favorable report from Senate Finance Committee on June 8, 2006.

CURRENT LAW: While a city or town has statutory authority to annex property, either voluntarily or involuntarily depending upon certain circumstances, there is no statutory authority to de-annex property. Deannexation requires an act of the General Assembly.

BILL ANALYSIS: Senate Bill 1526 de-annexes a 5.51 acre parcel from the corporate limits of the City of Reidsville. The act is effective from and after April 13, 1994.

BACKGROUND: In the mid-1970's the City was acquiring property for the construction of Lake Reidsville and sought to acquire a 7.74 acre tract on the southwest side that was needed. Negotiations were unsuccessful and a condemnation action was initiated. A negotiated settlement was reached whereby the City acquired 2.23 acres, the amount that was needed for the high water mark of the proposed lake, with the owners retaining the 5.51 acre balance of the tract. The original engineering maps were never changed to reflect the court settlement. Historically, the tax records have shown that the entire tract was owned by the City of Reidsville.

In 1994, in a voluntary petitioned annexation, the City annexed all City-owned land around the lake for the purposes of law enforcement authority. The entire tract has been in the City without question since that time.

Recently, the widow of the owner made an inquiry to the County Tax Department, prompting research into the matter that revealed the flaws in the history of the property. The current owners now wish to make use of the 5.51 acre tract they retained and find that it is officially in the City Limits and subject to taxation accordingly. The owners do not want their property in the City and have requested that it be removed. The Reidsville City Council has passed a Resolution requesting that the subject property be removed from the corporate limits of the City. This legislation is requested to correct the erroneous annexation in 1994 of the 5.51 acre tract into the corporate limits of the City of Reidsville.

S1526e1-SMRE

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☐ Committee Substitute for

SB 1526 A BILL TO BE ENTITLED AN ACT TO REMOVE CERTAIN DESCRIBED PROPERTY FROM THE CORPORATE LIMITS OF THE CITY OF REIDSVILLE.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S 2

SENATE BILL 1552
Finance Committee Substitute Adopted 6/1/06

Short Title: Additional Personal Income Tax Filing Option. (Public)

Sponsors:

Referred to:

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO ALLOW AN ADDITIONAL JOINT FILING OPTION FOR INDIVIDUAL INCOME TAXES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-152(e) reads as rewritten:

"(e) Joint Returns. – A husband and wife ~~shall file a single income tax return jointly if (i) their~~whose federal taxable income is determined on a joint federal return ~~and (ii) both spouses are residents of this State or both spouses have~~shall file a single income tax return jointly if each spouse either is a resident of this State or has North Carolina taxable ~~income.~~income and may file a single income tax return jointly if one spouse is not a resident and has no North Carolina taxable income. Except as otherwise provided in this Part, a wife and husband filing jointly are treated as one taxpayer for the purpose of determining the tax imposed by this Part. A husband and wife filing jointly are jointly and severally liable for the tax imposed by this Part reduced by the sum of all credits allowable including tax payments made by or on behalf of the husband and wife. However, if a spouse has been relieved of liability for federal tax attributable to a substantial understatement by the other spouse pursuant to section 6015 of the Code, that spouse is not liable for the corresponding tax imposed by this Part attributable to the same substantial understatement by the other spouse. A wife and husband filing jointly have expressly agreed that if the amount of the payments made by them with respect to the taxes for which they are liable, including withheld and estimated taxes, exceeds the total of the taxes due, refund of the excess may be made payable to both spouses jointly or, if either is deceased, to the survivor alone."

SECTION 2. This act is effective for taxable years beginning on or after January 1, 2006.

SENATE BILL 1552:
Additional Personal Income Tax Filing Option

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 21, 2006
Introduced by:	Sen. Webster	**Summary by:**	Martha Walston
Version:	Second Edition		Committee Counsel

SUMMARY: Senate Bill 1552 is a recommendation of the Revenue Laws Study Committee, upon the request of the Department of Revenue. It would allow married couples the option of filing a joint return if one spouse is a nonresident with no North Carolina income.

CURRENT LAW: Under current law, a married couple who file a federal joint return are required to file a North Carolina joint return if each spouse is either a resident or has North Carolina income. If one spouse is a nonresident and has no North Carolina income, that spouse is not subject to North Carolina income tax and the other spouse must file a separate return. The current law is based on the fact that North Carolina has no jurisdiction to tax a person who is not a resident and does not have income from North Carolina sources. The current law makes filing more complicated because the couple must recompute their income separately in order to file a North Carolina return.

BILL ANALYSIS: Senate Bill 1552 would allow a married couple the option of filing jointly if they file a federal joint return and if one spouse is a nonresident with no income from North Carolina. Because North Carolina does not have jurisdiction over the nonresident spouse, the bill does not require a joint return.[1] It merely gives a couple a joint return option so that they may choose to file jointly, for example if doing so would simplify their tax preparation or reduce their North Carolina taxes. This option would also allow North Carolina residents to file jointly in Georgia and South Carolina. Currently, these two states do not allow nonresident joint filing for residents of states that do not allow joint filings for Georgia and South Carolina residents.

EFFECTIVE DATE: Senate Bill 1552 is effective for taxable years beginning on or after January 1, 2006.

S1552e2-SMRB

[1] A New York court found that a provision, which required married nonresidents to file a joint nonresident tax return in New York if they filed a joint federal return, was unconstitutional. The court explained that the provision exposed a nonresident spouse with no New York connections to civil and criminal liability in New York by virtue of that spouse's signature on the State tax return.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: Senate Bill 1552 (Second Edition)

SHORT TITLE: Additional Personal Income Tax Filing Option.

SPONSOR(S): Senator Webster

FISCAL IMPACT

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

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES:	(1.0)	(1.0)	(1.0)	(1.0)	(1.0)
EXPENDITURES:					
POSITIONS (cumulative):					

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

EFFECTIVE DATE: Effective for taxable years beginning on or after January 1, 2006.

BILL SUMMARY: Under North Carolina law, a married couple that files a joint federal return must also file a joint state return, if both are residents of the State or have North Carolina income. This bill does not change that requirement. However, under current law, if one spouse is not a resident of North Carolina and has no North Carolina income, the other spouse must file a separate return with the State and is prohibited from filing a joint North Carolina tax return. The proposed legislation would allow such a couple the option of filing a joint North Carolina tax return. The bill is a recommendation of the North Carolina Department of Revenue and the Revenue Laws Study Committee.

ASSUMPTIONS AND METHODOLOGY: Currently no data is available from the Department of Revenue or other sources concerning the number of returns this change would impact, or the likely amount of revenue affected. However, the North Carolina Department of Revenue believes the number of taxpayers involved would be small. There are potentially a very limited number of

situations where a taxpayer could benefit financially by filing a joint tax return. Because this legislation gives a couple the option of choosing to file joint or separate returns, it would be reasonable to assume that there will be some taxpayers who will file jointly to limit their North Carolina tax liability. As such, there is a potential revenue loss. The Department of Revenue indicates that the potential dollar amount involved is likely to be near the estimate noted above, although no more exact estimate is possible.

SOURCES OF DATA: North Carolina Department of Revenue.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Linda Struyk Millsaps

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: June 21, 2006

Signed Copy Located in the NCGA Principal Clerk's Offices

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☒Committee Substitute for

SB 1552 A BILL TO BE ENTITLED AN ACT TO ALLOW AN ADDITIONAL JOINT FILING OPTION FOR INDIVIDUAL INCOME TAXES.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1283
Second Edition Engrossed 6/1/06
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1283-CSRBx-60 [v.1]

6/21/2006 8:56:40 PM

Short Title: Franchise Tax Base Calculation. (Public)

Sponsors:

Referred to:

May 11, 2006

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE TREATMENT OF DEFERRED TAX ASSETS IN THE COMPUTATION OF THE FRANCHISE TAX CAPITAL BASE AND TO INCREASE THE ADMINISTRATIVE EFFICIENCY OF THE UNIVERSITY OF NORTH CAROLINA BY EXEMPTING IT FROM LAWS GOVERNING CONSULTANT SERVICES, ALLOWING THE BOARD OF GOVERNORS TO DELEGATE MORE AUTHORITY TO THE PRESIDENT OF THE UNIVERSITY OF NORTH CAROLINA, AND CHANGING ITS REPORTING DATES.

The General Assembly of North Carolina enacts:

PART I. FRANCHISE TAX BASE CALCULATION

SECTION 1.1. G.S. 105-122(b) reads as rewritten:

"(b) Determination of Capital Base. – ~~Every such~~ A corporation taxed under this section shall determine the total amount of its issued and outstanding capital stock, ~~surplus~~ surplus, and undivided ~~profits; no reservation or allocation~~ profits. No reservation or allocation from surplus or undivided profits ~~shall be~~ is allowed ~~other than for~~ except as provided below:

(1) Definite ~~definite~~ and accrued legal ~~liabilities, except as herein provided;~~liabilities.

(2) ~~taxes~~ Taxes accrued, dividends ~~declared~~ declared, and reserves for depreciation of tangible assets as permitted for income tax ~~purposes shall be treated as deductible liabilities. There shall also be treated as a deductible liability reserves for the entire cost~~ purposes.

(3) When including deferred tax liabilities, a corporation may reduce the amount included in its base by netting against that amount deferred tax assets. The reduction may not decrease deferred tax liabilities below zero (0).

(4) Reserves for the cost of any air-cleaning device or sewage or waste treatment plant, including waste lagoons, and pollution abatement equipment purchased or constructed and installed which reduces the amount of air or water pollution resulting from the emission of air contaminants or the discharge of sewage and industrial wastes or other polluting materials or substances into the outdoor atmosphere or streams, lakes, or rivers, upon condition that the corporation claiming such deductible liability shall furnish to the Secretary a certificate from the Department of Environment and Natural Resources or from a local air pollution control program for air-cleaning devices located in an area where the Environmental Management Commission has certified a local air pollution control program pursuant to G.S. 143-215.112 certifying that the Environmental Management Commission or local air pollution control program has found as a fact that the air-cleaning device, waste treatment plant or pollution abatement equipment purchased or constructed and installed as above described has actually been constructed and installed and that such plant or equipment complies with the requirements of the Environmental Management Commission or local air pollution control program with respect to such devices, plants or equipment, that such device, plant or equipment is being effectively operated in accordance with the terms and conditions set forth in the permit, certificate of approval, or other document of approval issued by the Environmental Management Commission or local air pollution control program and that the primary purpose thereof is to reduce air or water pollution resulting from the emission of air contaminants or the discharge of sewage and waste and not merely incidental to other purposes and functions.

(5) ~~The~~ Reserves for the cost of purchasing and installing equipment or constructing facilities for the purpose of recycling or resource recovering of or from solid waste or for the purpose of reducing the volume of hazardous waste generated shall be treated as deductible for the purposes of this section upon condition that the corporation claiming such deductible liability shall furnish to the Secretary a certificate from the Department of Environment and Natural Resources certifying that the Department of Environment and Natural Resources has found as a fact that the equipment or facility has actually been purchased, installed or constructed, that it is in conformance with all rules and regulations of the Department of Environment and Natural Resources, and the recycling or resource recovering is the primary purpose of the facility or equipment.

(6) ~~The~~ Reserves for the cost of constructing facilities of any private or public utility built for the purpose of providing sewer service to residential and outlying areas shall be treated as deductible for the purposes of this section; the deductible liability allowed by this section

shall apply only with respect to such pollution abatement plants or equipment constructed or installed on or after January 1, 1955.

(7) ~~Treasury stock shall not be considered in computing the capital stock, surplus and undivided profits as the basis for franchise tax, but shall be excluded proportionately from said capital stock, surplus and undivided profits as the case may be upon the basis and to the extent of the cost thereof.~~ The cost of treasury stock.

(8) In the case of an international banking facility, the capital base shall be reduced by the excess of the amount as of the end of the taxable year of all assets of an international banking facility which are employed outside the United States over liabilities of the international banking facility owed to foreign persons. For purposes of such reduction, foreign persons shall have the same meaning as defined in G.S. 105-130.5(b)(13)d.

Every corporation doing business in this State which is a parent, subsidiary, or affiliate of another corporation shall add to its capital stock, ~~surplus~~ surplus, and undivided profits all indebtedness owed to a parent, ~~subsidiary~~ subsidiary, or affiliated corporation as a part of its capital used in its business and as a part of the base for franchise tax under this section. ~~The term "indebtedness" as used in this paragraph includes all loans, credits, goods, supplies, or other capital of whatsoever nature furnished by a parent, subsidiary, or affiliated corporation, other than indebtedness endorsed, guaranteed, or otherwise supported by one of these corporations. The terms "parent," "subsidiary," and "affiliate" as used in this paragraph shall have the meaning specified in G.S. 105-130.6.~~ If any part of the capital of the creditor corporation is capital borrowed from a source other than a parent, ~~subsidiary~~ subsidiary, or affiliate, the debtor corporation, which is required under this ~~paragraph~~ subsection to include in its tax base the amount of debt by reason of being a parent, subsidiary, or affiliate of the ~~said~~ creditor corporation, may deduct from the debt ~~thus~~ included a proportionate part determined on the basis of the ratio of ~~such~~ the borrowed capital ~~as above specified~~ of the creditor corporation to the total assets of the ~~said~~ creditor corporation. If ~~Further, in case~~ the creditor corporation ~~as above specified~~ is also taxable under the provisions of this section, ~~such~~ the creditor corporation ~~shall be~~ is allowed to deduct from the total of its capital, ~~surplus~~ surplus, and undivided profits the amount of any debt owed to it by a parent, subsidiary or affiliated corporation to the extent that ~~such~~ the debt has been included in the tax base of ~~said~~ the parent, ~~subsidiary~~ subsidiary, or affiliated debtor corporation reporting for taxation under the provisions of this section.

The following definitions apply in this subsection:

(1) Affiliate. – The same meaning as specified in G.S. 105-130.6.

(2) Indebtedness. – All loans, credits, goods, supplies, or other capital of whatsoever nature furnished by a parent, subsidiary, or affiliated corporation, other than indebtedness endorsed, guaranteed, or otherwise supported by one of these corporations.

(3) Parent. – The same meaning as specified in G.S. 105-130.6.

(4) Subsidiary. – The same meaning as specified in G.S. 105-130.6."

SECTION 1.2. This part becomes effective for taxable years beginning on or after January 1, 2007.

PART II. UNIVERSITY EFFICIENCY MEASURES

SECTION 2.1. G.S. 143-64.24 reads as rewritten:

"**§ 143-64.24. Applicability of Article.**

This Article shall not apply to the following agencies:

(1) The General ~~Assembly, special~~ Assembly.

(2) Special study ~~commissions, the~~ commissions.

(3) The Research Triangle ~~Institute, or the~~ Institute.

(4) The Institute of ~~Government, nor shall it apply to attorneys~~

(5) Attorneys employed by the North Carolina Department of ~~Justice, or physicians~~Justice.

(6) Physicians or doctors performing contractual services for any State agency. ~~This Article shall not apply to Independent~~

(7) Independent Review Organizations selected by the Commissioner of Insurance pursuant to G.S. 58-50-85.

(8) The University of North Carolina. The Board of Governors of the University of North Carolina must adopt policies and procedures governing contracts to obtain the services of a consultant by the constituent institutions of the University of North Carolina."

SECTION 2.2. G.S. 116-11(13) reads as rewritten:

"**§ 116-11. Powers and duties generally.**

The powers and duties of the Board of Governors shall include the following:

...

(13) The Board may delegate any part of its authority over the affairs of any institution to the board of trustees or, through the President, to the chancellor of the institution in any case where such delegation appears necessary or prudent to enable the institution to function in a proper and expeditious manner. The Board may delegate any part of its authority over the affairs of the University of North Carolina to the President in any case where such delegation appears necessary or prudent to enable the University to function in a proper and expeditious manner. Any delegation of authority may be rescinded by the Board at any time in whole or in part."

SECTION 2.3. G.S. 116-209.35(f) reads as rewritten:

"(f) The Board of Governors of The University of North Carolina shall report to the Joint Legislative Education Oversight Committee by ~~March 1~~ December 1 each year regarding the Fund and scholarships awarded from the Fund."

SECTION 2.4. G.S. 116-209.36(g) reads as rewritten:

"(g) The State Education Assistance Authority shall report to the Joint Legislative Education Oversight Committee by ~~March 1~~ December 1 each year regarding the Fund and scholarship loans awarded from the Fund."

SECTION 2.5. G.S. 116-209.38(f) reads as rewritten:

"(f) The Board of Governors of The University of North Carolina shall report to the Joint Legislative Education Oversight Committee by ~~March 1~~ December 1 each year regarding the Fund and scholarship loans awarded from the Fund."

SECTION 2.6. This Part is effective when it becomes law.

PART III. EFFECTIVE DATE.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 2

SENATE BILL 1283
Second Edition Engrossed 6/1/06

Short Title:	Franchise Tax Base Calculation.	(Public)
Sponsors:	Senators Hartsell; Dalton, Hoyle, and Kerr.	
Referred to:	Finance.	

May 11, 2006

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE TREATMENT OF DEFERRED TAX ASSETS IN THE COMPUTATION OF THE FRANCHISE TAX CAPITAL BASE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-122(b) reads as rewritten:

"(b) Determination of Capital Base. – ~~Every such~~ A corporation taxed under this section shall determine the total amount of its issued and outstanding capital stock, ~~surplus~~ surplus, and undivided ~~profits; no reservation or allocation~~ profits. No reservation or allocation from surplus or undivided profits ~~shall be~~ is allowed ~~other than for~~ except as provided below:

(1) Definite ~~definite~~ and accrued legal ~~liabilities, except as herein provided;~~liabilities.

(2) ~~taxes~~ Taxes accrued, dividends ~~declared~~ declared, and reserves for depreciation of tangible assets as permitted for income tax ~~purposes shall be treated as deductible liabilities. There shall also be treated as a deductible liability reserves for the entire cost~~ purposes.

(3) When including deferred tax liabilities, a corporation may reduce the amount included in its base by netting against that amount deferred tax assets. The reduction may not decrease deferred tax liabilities below zero (0).

(4) Reserves for the cost of any air-cleaning device or sewage or waste treatment plant, including waste lagoons, and pollution abatement equipment purchased or constructed and installed which reduces the amount of air or water pollution resulting from the emission of air contaminants or the discharge of sewage and industrial wastes or other polluting materials or substances into the outdoor atmosphere or streams, lakes, or rivers, upon condition that the corporation claiming such deductible liability shall furnish to the Secretary a certificate from the Department of Environment and Natural Resources or from a local

air pollution control program for air-cleaning devices located in an area where the Environmental Management Commission has certified a local air pollution control program pursuant to G.S. 143-215.112 certifying that the Environmental Management Commission or local air pollution control program has found as a fact that the air-cleaning device, waste treatment plant or pollution abatement equipment purchased or constructed and installed as above described has actually been constructed and installed and that such plant or equipment complies with the requirements of the Environmental Management Commission or local air pollution control program with respect to such devices, plants or equipment, that such device, plant or equipment is being effectively operated in accordance with the terms and conditions set forth in the permit, certificate of approval, or other document of approval issued by the Environmental Management Commission or local air pollution control program and that the primary purpose thereof is to reduce air or water pollution resulting from the emission of air contaminants or the discharge of sewage and waste and not merely incidental to other purposes and functions.

(5) ~~The~~ Reserves for the cost of purchasing and installing equipment or constructing facilities for the purpose of recycling or resource recovering of or from solid waste or for the purpose of reducing the volume of hazardous waste generated shall be treated as deductible for the purposes of this section upon condition that the corporation claiming such deductible liability shall furnish to the Secretary a certificate from the Department of Environment and Natural Resources certifying that the Department of Environment and Natural Resources has found as a fact that the equipment or facility has actually been purchased, installed or constructed, that it is in conformance with all rules and regulations of the Department of Environment and Natural Resources, and the recycling or resource recovering is the primary purpose of the facility or equipment.

(6) ~~The~~ Reserves for the cost of constructing facilities of any private or public utility built for the purpose of providing sewer service to residential and outlying areas shall be treated as deductible for the purposes of this section; the deductible liability allowed by this section shall apply only with respect to such pollution abatement plants or equipment constructed or installed on or after January 1, 1955.

(7) ~~Treasury stock shall not be considered in computing the capital stock, surplus and undivided profits as the basis for franchise tax, but shall be excluded proportionately from said capital stock, surplus and undivided profits as the case may be upon the basis and to the extent of the cost thereof.~~ The cost of treasury stock.

(8) In the case of an international banking facility, the capital base shall be reduced by the excess of the amount as of the end of the taxable year

of all assets of an international banking facility which are employed outside the United States over liabilities of the international banking facility owed to foreign persons. For purposes of such reduction, foreign persons shall have the same meaning as defined in G.S. 105-130.5(b)(13)d.

Every corporation doing business in this State which is a parent, subsidiary, or affiliate of another corporation shall add to its capital stock, ~~surplus~~ surplus, and undivided profits all indebtedness owed to a parent, ~~subsidiary~~ subsidiary, or affiliated corporation as a part of its capital used in its business and as a part of the base for franchise tax under this section. ~~The term "indebtedness" as used in this paragraph includes all loans, credits, goods, supplies, or other capital of whatsoever nature furnished by a parent, subsidiary, or affiliated corporation, other than indebtedness endorsed, guaranteed, or otherwise supported by one of these corporations. The terms "parent," "subsidiary," and "affiliate" as used in this paragraph shall have the meaning specified in G.S. 105-130.6.~~ If any part of the capital of the creditor corporation is capital borrowed from a source other than a parent, ~~subsidiary~~ subsidiary, or affiliate, the debtor corporation, which is required under this ~~paragraph~~ subsection to include in its tax base the amount of debt by reason of being a parent, subsidiary, or affiliate of the ~~said~~ creditor corporation, may deduct from the debt ~~thus~~ included a proportionate part determined on the basis of the ratio of ~~such~~ the borrowed capital ~~as above specified~~ of the creditor corporation to the total assets of the ~~said~~ creditor corporation. If ~~Further, in case~~ the creditor corporation ~~as above specified~~ is also taxable under the provisions of this section, ~~such~~ the creditor corporation ~~shall be~~ is allowed to deduct from the total of its capital, ~~surplus~~ surplus, and undivided profits the amount of any debt owed to it by a parent, subsidiary or affiliated corporation to the extent that ~~such~~ the debt has been included in the tax base of ~~said~~ the parent, ~~subsidiary~~ subsidiary, or affiliated debtor corporation reporting for taxation under the provisions of this section.

The following definitions apply in this subsection:

(1) Affiliate. – The same meaning as specified in G.S. 105-130.6.

(2) Indebtedness. – All loans, credits, goods, supplies, or other capital of whatsoever nature furnished by a parent, subsidiary, or affiliated corporation, other than indebtedness endorsed, guaranteed, or otherwise supported by one of these corporations.

(3) Parent. – The same meaning as specified in G.S. 105-130.6.

(4) Subsidiary. – The same meaning as specified in G.S. 105-130.6."

SECTION 2. This act becomes effective for taxable years beginning on or after January 1, 2007.

SENATE BILL 1283:
Franchise Tax Base Calculation

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 21, 2006
Introduced by:	Sen. Hartsell	**Summary by:**	Cindy Avrette
Version:	PCS to Second Edition S1283-CSRBx-60		Committee Counsel

SUMMARY: Senate Bill 1283 seeks to clarify the treatment of deferred tax assets in the computation of the franchise tax capital base. The bill is a recommendation of the Revenue Laws Study Committee. It would become effective when it becomes law.

The proposed House committee substitute would add another part to the bill requested by the University of North Carolina Board of Governors. The changes in this part would do the following:

- *Exempt the University of North Carolina from the statutes governing contracts for consultant services. The Board of Governors would be required to establish its own rules governing these contracts.*
- *Allow the Board of Governors to delegate more authority to the President of the University of North Carolina.*
- *Change the reporting date of several other studies.*

BILL ANALYSIS OF FRANCHISE TAX BASE CALCULATION: North Carolina imposes a franchise tax at the rate of $1.50 per $1,000 of the total amount of a corporation's capital stock, surplus, and undivided profits (hereinafter referred to as the corporation's capital base). The corporation's capital base may not be less than 55% of the appraised value of all the real and tangible personal property owned by the corporation in the State nor less than its total actual investment in tangible property in the State.

Most public corporations compute their capital base for financial reporting purposes. Public corporations must comply with the requirements of the Financial Accounting Standards Board (FASB) when reporting the results of their operations and financial positions. Under FASB, corporations are required to accrue certain liabilities and the related deferred tax assets which are applicable to those accrued liabilities in order to accurately reflect the financial position of the corporation.

A corporation's determination of its capital base for purposes of the franchise tax is not the same as the calculation of its capital base for financial reporting purposes. The calculation of its capital base for franchise tax purposes is determined by G.S. 105-122(b), not by the requirements of FASB. The statute refers to book value as 'issued and outstanding capital stock, surplus, and undivided profits.' This is similar to net book value with certain adjustments. The principal adjustment is for contingent or deferred liabilities.

Deferred tax assets and deferred tax liabilities are accounts carried on the books of a corporation for financial reporting purposes. They represent timing differences in the recognition of income and deductions for income tax purposes and for financial accounting purposes. Deferred tax liability typically arises where income has been recognized on the corporation's books but not for tax purposes. For example, where a gain is reflected on the books but reported for tax purposes on the installment basis.

- Under FASB, deferred tax liabilities are recognized as liabilities for accounting purposes.
- Deferred liabilities are not recognized for franchise tax purposes because they are not 'definite and accrued'. Therefore, deferred tax liabilities must be added back to a corporation's capital base for franchise tax purposes.
- Frequently, a taxpayer that has a deferred liability will also have a deferred tax asset. The issue is whether the deferred liability that must be added-back can be reduced by the amount of the deferred tax asset. In 1996, the Department of Revenue issued a TAM (technical advice memorandum) that permitted the netting of deferred liability accounts and deferred tax asset accounts. The TAM provided that the deferred tax asset account had to be clearly identified with the deferred tax liability account and the deferred tax asset could not reduce the related deferred liability below zero (0).

The statute, the 1996 TAM, and GAAP differ on how to account for deferred tax assets. The purpose of this bill is to determine how deferred tax assets should be treated for franchise tax purposes and to state that treatment clearly in the statute.

The franchise tax statute begins the calculation of a corporation's franchise tax capital base with the '*total amount of its issued stock, surplus, and undivided profit*'. The statute provides that '*no reservation or allocation from surplus or undivided profits shall be allowed other than for definite and accrued legal liabilities, except as herein provided: taxes accrued, dividends declared and reserves for depreciation of tangible assets as permitted for income tax purposes shall be treated as deductible liabilities.*'

In 1992, FASB Statement No. 109 established financial accounting and reporting standards for the effects of income taxes that result from an enterprise's activities during the current and preceding years. The statement resulted in deferred tax assets being separately stated from deferred tax liabilities. When the two accounts were netted, a smaller net tax liability account was added-back to the franchise tax base. When the accounts had to be separately stated, the Department did not permit the netting of the two accounts. This resulted in the add-back of the deferred tax liability unreduced by the amount of the deferred tax asset.

Taxpayers having deferred tax asset accounts contended that they should be allowed to reduce their capital stock bases by the balances in those accounts. Since the asset and liability accounts are reciprocal concepts, they argued that it was inequitable to include a deferred tax liability in the capital stock base without decreasing it by the deferred tax asset.

In response to taxpayer concerns, the Department of Revenue issued TAM-CF-96-1 in August of 1996. The TAM appears to contradict the plain meaning of the statute because it permits the deferred liability accounts to be reduced by deferred tax asset accounts.[1] In explaining the change, the TAM states that a more equitable and consistent position is to recognize that net worth is incorrectly stated when the total amount of a deferred liability is included without a netting adjustment for the deferred tax benefit resulting directly from such liability. The TAM provides that the inclusion of a deferred liability in the computation of the net worth base should permit an offset or adjustment for the deferred tax asset required to be computed under the accounting standards without regard to how the deferred tax asset is reflected on the financial statement.

The FASB change in 1992 concerned the accounting for income taxes. Arguably, the TAM written in 1996 attempted to address the accounting changes precipitated by that FASB change. The wording of

[1] The TAM became effective for tax years ending on or after July 1, 1996.

the TAM, however, refers to deferred liabilities as a whole instead of just deferred tax liabilities. Any deferred liability may create a corresponding deferred tax asset. Taxpayers contend that the TAM permits them to reduce the amount of any deferred liability required to be added back to its net book value for franchise tax purposes by the amount of a deferred tax asset. Examples of the types of contingent and deferred liabilities that have been reduced include post retirement benefits, loan loss reserves, credit card reserves, and litigation reserves.

Senate Bill 1283 would change the law to allow deferred tax liabilities to be reduced by their corresponding deferred tax assets.

S1283e2-SMRB-CSRB

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: Senate Bill 1283 (Second Edition)

SHORT TITLE: Franchise Tax Base Calculation.

SPONSOR(S):

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:			**See "Assumptions and Methodology"**		
EXPENDITURES:					

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

EFFECTIVE DATE: Tax years beginning on or after January 1, 2007..

BILL SUMMARY: Since August 1, 1996 the Department of Revenue has been allowing taxpayers, when calculating their franchise tax base, to reduce, but not below zero, a deferred liability by the deferred tax asset amount that resulted when the deferred liability was required under financial accounting standards. The current management of the Department of Revenue feels that the Department did not have the statutory authority to make such a ruling in 1996 and some taxpayers are challenging some of the specifics of the ruling. The proposal attempts to clarify the issue by allowing deferred tax liabilities to be reduced by their corresponding tax assets, but not below zero.

ASSUMPTIONS AND METHODOLOGY: Discussions with the Department of Revenue indicate that the impact of the change will be fairly small.

SOURCES OF DATA: North Carolina Department of Revenue.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: David Crotts

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: June 5, 2006

Signed Copy Located in the NCGA Principal Clerk's Offices

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☐ Committee Substitute for

SB 1283 A BILL TO BE ENTITLED AN ACT TO CLARIFY THE TREATMENT OF DEFERRED TAX ASSETS IN THE COMPUTATION OF THE FRANCHISE TAX CAPITAL BASE.

☒ With a favorable report as to the House committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

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

_____ Pursuant to Rule 36(b), the (House/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 1809*
Finance Committee Substitute Adopted 6/1/06

Short Title: University Indebtedness Projects. (Public)

Sponsors:

Referred to:

May 24, 2006

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CONSTRUCTION AND THE FINANCING, WITHOUT APPROPRIATIONS FROM THE GENERAL FUND, OF CERTAIN CAPITAL IMPROVEMENTS PROJECTS OF THE CONSTITUENT INSTITUTIONS OF THE UNIVERSITY OF NORTH CAROLINA AND TO MAKE REVISIONS TO PREVIOUSLY AUTHORIZED INDEBTEDNESS FOR VARIOUS CAPITAL IMPROVEMENTS PROJECTS OF THE CONSTITUENT INSTITUTIONS OF THE UNIVERSITY OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

PART I. SELF-LIQUIDATING PROJECTS

SECTION 1.1. The purpose of this part is: (i) to authorize the construction or acquisition by certain constituent institutions of The University of North Carolina of the capital improvements projects listed in the part for the respective institutions, and (ii) to authorize the financing of these projects with funds available to the institutions from gifts, grants, receipts, self-liquidating indebtedness, Medicare reimbursements for education costs, or other funds, or any combination of these funds, but not including funds received for tuition or appropriated from the General Fund.

SECTION 1.2. The capital improvements projects, and their respective costs, authorized by this part to be constructed or otherwise acquired and financed as provided in Section 1.1 of this part, including by revenue bonds, by special obligation bonds as authorized in Section 1.5 of this part, or by both, are as follows:

Appalachian State University
Central Dining Facility – Phase II $4,850,000

East Carolina University
Mendenhall Student Center and Ledonia Wright Cultural Center – Expansion and Renovation $39,000,000

Todd Dining Hall – Renovation $2,100,000
Brody School of Medicine – Renovations $1,200,000
Brody School of Medicine – Health Science Campus – Renovations $6,000,000

Elizabeth City State University
Residence Hall-Heating, Ventilating, and Air-Conditioning Improvements $1,500,000

North Carolina State University
Derr Track – Renovation and Expansion – Phase II $2,500,000
Partners VI Building and Parking Deck $40,000,000
Centennial Campus Infrastructure $10,000,000

The University of North Carolina at Chapel Hill
Food Service Facilities – Renovation and Expansion $3,500,000
Science Complex – Phase II $92,200,000
Carmichael Auditorium – Renovation and Expansion $15,000,000
Research Resource Facility – Phase II $12,400,000
Residence Halls – Improvements $2,000,000
Woollen Gymnasium – Renovation $4,500,000
Boshamer Baseball Stadium – Improvements $14,000,000
Cogeneration Warehouse $500,000
Steam Infrastructure Improvements $55,700,000
Electrical Infrastructure Improvements $29,530,000
Bell Tower Development – Phase I $10,000,000
Global Education & International Studies Center – Improvements $2,500,000

The University of North Carolina at Charlotte
Prospector Hall – Renovation – Phase II $4,000,000
Residence Halls – Phase IX $38,800,000

The University of North Carolina at Greensboro
Residence Hall – Acquisition $29,500,000

The University of North Carolina at Wilmington
Residence Halls – Improvements $4,900,000

Western Carolina University
Residence Hall – Renovation and Expansion $1,000,000

Winston-Salem State University
Residence Hall – Renovation $4,500,000

SECTION 1.3. The following capital improvements projects are authorized by the Board of Governors as supplements to previously approved projects, and their

respective costs are authorized by this part to be constructed and financed as provided in Section 1.1 of this part, including by revenue bonds, by special obligation bonds as authorized in Section 1.5 of this part, or by both:

North Carolina State University
Residence Halls – Renovation – Supplement $11,500,000
Thompson Theater – Renovation and Expansion – Supplement $4,500,000

The University of North Carolina at Chapel Hill
Residence Halls – Improvements – Supplement $2,500,000
Botanical Garden Visitor Education Center – Supplement $5,000,000
Educational Foundation Office Building – Supplement $12,000,000
Cobb Residence Hall – Renovation – Supplement $5,116,000
Residence College – Phase II – Supplement $8,000,000
Rizzo Center – Expansion – Supplement $5,300,000

The University of North Carolina at Charlotte
Student Union – Supplement $10,000,000

The University of North Carolina at Greensboro
Parking Deck Addition – Supplement $1,000,000

The University of North Carolina at Pembroke
University Center Expansion – Supplement $2,000,000

The University of North Carolina at Wilmington
University Union Building – Expansion and Renovation – Supplement $12,000,000

Western Carolina University
Dodson Cafeteria Replacement – Supplement $12,250,000
New Student Recreation Center – Supplement $6,200,000

SECTION 1.4. At the request of the Board of Governors of The University of North Carolina and upon determining that it is in the best interest of the State to do so, the Director of the Budget may authorize an increase or decrease in the cost of, or a change in the method of, funding the projects authorized by this part. In determining whether to authorize a change in cost or funding, the Director of the Budget may consult with the Joint Legislative Commission on Governmental Operations.

SECTION 1.5. Pursuant to G.S. 116D-26, the Board of Governors may issue, subject to the approval of the Director of the Budget, at one time or from time to time, special obligation bonds of the Board of Governors for the purpose of paying all or any part of the cost of acquiring, constructing, or providing for the projects authorized by Sections 1.2 and 1.3 of this part. The maximum principal amount of bonds to be issued shall not exceed the specified project costs in Sections 1.2 and 1.3 of

this part plus five percent (5%) of such amount to pay issuance expenses, fund reserve funds, pay capitalized interest, and pay other related additional costs, plus any increase in the specific project costs authorized by the Director of the Budget pursuant to Section 1.4 of this part.

SECTION 1.6. With respect to the University of North Carolina at Chapel Hill's Research Resources Facility capital project, the institution may accomplish construction and financing notwithstanding the requirement in G.S. 116D-22(5) as to location at the institution.

SECTION 1.7. With respect to the forty-seven million five hundred twenty-two thousand dollars ($47,522,000) Major Infrastructure Improvements capital project at the University of North Carolina at Chapel Hill that was previously approved in S.L. 2005-324, the institution may accomplish a portion thereof by payment to Duke Power Company LLC to acquire distribution capacity in improvements to be constructed by Duke Power Company LLC to three electrical substations located on the institution's property and by negotiating and executing any rights-of-way, easements, leases, and any other required agreements with Duke Power Company LLC necessary for the completion of the improvements, notwithstanding any other provisions of the General Statutes governing such negotiation and execution of such rights-of-way, easements, leases, or other required agreements therefor.

SECTION 1.8. With respect to the thirty million dollars ($30,000,000) Student Housing project at North Carolina Central University that was previously approved in S.L. 2005-324, the institution may construct one or more new or purchase one or more existing buildings to meet its need for student housing.

PART II. REVISE UNIVERSITY SPECIAL INDEBTEDNESS

SECTION 2.1. Section 1.1 of S.L. 2004-179, as amended by Section 30.3A of S.L. 2005-276, reads as rewritten:

"**SECTION 1.1.** In accordance with G.S. 142-83, this section authorizes the issuance or incurrence of special indebtedness in the following maximum aggregate principal amounts to finance the costs of the following projects. The table below provides the maximum principal amounts. The first column is the aggregate maximum principal amount. The second column is the maximum portion of this amount that can be issued or incurred before July 1, 2005. The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the cost of these projects.

Aggregate Maximum	**Maximum before 7/1/05**	**Project**
$180,000,000	$110,000,000	Acquiring, constructing, and equipping a new cancer rehabilitation and treatment center, a nearby physicians' office building, and a walkway between the two, all to be located at

		the University of North Carolina Hospitals at Chapel Hill.
60,000,000	30,000,000	Acquiring, constructing, and equipping the North Carolina Cardiovascular Diseases Institute at East Carolina University.
35,000,000	25,000,000	Acquiring, constructing, and equipping a Bioinformatics Center at the University of North Carolina at Charlotte.
28,000,000	25,000,000	Acquiring, constructing, and equipping a stand-alone facility to house the new Pharmacy School program to be located at Elizabeth City State University, and interim temporary facilities to house the program during construction of the facility.
35,000,000	25,000,000	Acquiring, constructing, and equipping a Center for Health Promotion and Partnerships at the University of North Carolina at Asheville.
10,000,000	10,000,000	Land acquisition, site preparation, engineering, architectural, and other consulting services, and construction for the Southeastern North Carolina Nursing Education and Research Center at Fayetteville State University.
10,000,000	10,000,000	~~Land acquisition, site~~Site preparation, ~~and~~ engineering, architectural, and other consulting ~~services for facilities for development of the~~services, and the construction of a research building on the joint Millennial Campus of North Carolina Agricultural and Technical State University and the University of North Carolina at Greensboro.
10,000,000	10,000,000	Land acquisition, site preparation, ~~and~~ engineering, architectural, and other consulting ~~services for an Optometry School facility~~services, and construction of a Nursing and Allied Health Building at the University of North Carolina at Pembroke.
10,000,000	10,000,000	To Western Carolina University for land acquisition, site preparation, ~~and~~ engineering, architectural, and other consulting ~~services~~ services, and construction of a building for Western Carolina University and the Mountain

		Area Health Education Consortium for the North Carolina Center for Health and Aging to be operated as a consortium among Western Carolina University, the University of North Carolina at Asheville, and the Mountain Area Health Education Consortium.
10,000,000	10,000,000	~~Property acquisition in Piedmont Triad Research Park for Winston-Salem State University programming related to biotechnology education and research; and land~~Land acquisition, site preparation, ~~and~~ engineering, architectural, and other consulting ~~services for~~services, and construction of a Center for Design Innovation in the Piedmont Triad Research Park to be operated jointly by Winston-Salem State University and the North Carolina School of the Arts.
TOTAL:		
$388,000,000	$265,000,000"	

PART III. REVISE UNIVERSITY GENERAL OBLIGATION INDEBTEDNESS

SECTION 3.1. Pursuant to Section 2(b) of S.L. 2000-3, the General Assembly finds that it is in the best interest of the State to respond to current educational and research program requirements at North Carolina State University by reducing the scope of "Williams Hall Laboratory Building-Comprehensive Renovation." The unused funds from "Williams Hall Laboratory Building-Comprehensive Renovation" should be transferred to the following projects listed under the section entitled North Carolina State University: "Polk Hall Laboratory Building-Comprehensive Renovation," "1911 Classroom Building-Comprehensive Renovation," and "Park Shops-Comprehensive Renovation and Use Conversion for General Academic Use." Section 2(a) of S.L. 2000-3 is therefore amended in the portion under North Carolina State University by:

(1) Reducing the portion to "Williams Hall Laboratory Building-Comprehensive Renovation" by six million four hundred forty-five thousand dollars ($6,445,000) so that it reads six million four hundred twenty thousand five hundred dollars ($6,420,500),

(2) Increasing the portion to "Polk Hall Laboratory Building -Comprehensive Renovation" by one hundred one thousand three hundred sixty-two dollars ($101,362) so that it reads fifteen million one hundred fifty-four thousand three hundred sixty-two dollars ($15,154,362),

(3) Increasing the portion to "1911 Classroom Building Comprehensive Renovation" by two million six hundred sixty-three thousand seven

hundred fifty-seven dollars ($2,663,757) so that it reads nine million six hundred thirty-five thousand seven hundred fifty-seven dollars ($9,635,757),

(4) Increasing the portion to "Park Shops – Comprehensive Renovation and Use Conversion for General Academic Use" by three million six hundred seventy-nine thousand eight hundred eighty-one dollars ($3,679,881) so that it reads nine million nine hundred ninety thousand five hundred eighty-one dollars ($9,990,581).

SECTION 3.2. Pursuant to Section 2(b) of S.L. 2000-3, the General Assembly finds that it is in the best interest of the State to respond to current educational and research program requirements at the University of North Carolina at Chapel Hill by reducing the scope of "Caldwell and Howell Halls-Comprehensive Renovation of Classrooms and Lecture Halls" and by reducing the scope of "Hill and Davie Halls-Comprehensive Renovation of Classrooms and Lecture Halls." The unused monies from "Caldwell and Howell Halls-Comprehensive Renovation of Classrooms and Lecture Halls" should be transferred to "Hamilton Hall-Comprehensive Renovation of Classrooms and Lecture Halls." The unused monies from "Hill and Davie Halls-Comprehensive Renovation of Classrooms and Lecture Halls" should be transferred to "Greenlaw Hall-Comprehensive Renovation of Classrooms and Lecture Halls." Section 2(a) of S.L. 2000-3 is therefore amended in the portion under the University of North Carolina at Chapel Hill by:

(1) Reducing the portion to "Caldwell and Howell Halls-Comprehensive Renovation of Classrooms and Lecture Halls" by eight hundred forty-five thousand two hundred forty-six dollars ($845,246) so that it reads eight hundred eighty-six thousand seven hundred fifty-four dollars ($886,754),

(2) Reducing the portion to "Hill and Davie Hall-Comprehensive Renovation of Classrooms and Lecture Halls" by one million three hundred twenty-four thousand seven hundred twenty-nine dollars ($1,324,729) so that it reads six hundred twenty-four thousand two hundred seventy-one dollars ($624,271),

(3) Increasing the portion to "Hamilton Hall-Comprehensive Renovation of Classrooms and Lecture Halls" by eight hundred forty-five thousand two hundred forty-six dollars ($845,246) so that it reads two million three hundred eighty-four thousand two hundred forty-six dollars ($2,384,246),

(4) Increasing the portion to "Greenlaw Hall-Comprehensive Renovation of Classrooms and Lecture Halls" by one million three hundred twenty-four thousand seven hundred twenty-nine dollars ($1,324,729) so that it reads three million one hundred forty-nine thousand seven hundred twenty-nine dollars ($3,149,729).

SECTION 3.3. Pursuant to Section 2(b) of S.L. 2000-3, the General Assembly finds that it is in the best interest of the State to respond to current educational and research program requirements at Western Carolina University by

reducing the scope of "Forsyth Classroom and Computer Labs Renovation," and by transferring the unused funds to "Stillwell Lab Building-Comprehensive Renovation." Section 2(a) of S.L. 2000-3 is therefore amended in the portion under Western Carolina University by:

(1) Reducing the portion to "Forsyth Classroom and Computer Labs Renovation" by three million two hundred thousand dollars ($3,200,000) so that it reads three million eight hundred sixty-four thousand dollars ($3,864,000),

(2) Increasing the portion to "Stillwell Lab Building-Comprehensive Renovation" by three million two hundred thousand dollars ($3,200,000) so that it reads eighteen million two hundred fifty-seven thousand five hundred dollars ($18,257,500).

SECTION 3.4. Nothing in this part is intended to supersede any other requirement of law or policy for approval of the substituted capital improvement projects.

PART IV. EFFECTIVE DATE

SECTION 4.1. This act is effective when it becomes law.

SENATE BILL 1809:
University Indebtedness Projects

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 21, 2006
Introduced by:	Sen. Kerr	**Summary by:**	Y. Canaan Huie
Version:	Second Edition		Committee Counsel

SUMMARY: ***This bill authorizes new self-liquidating indebtedness projects for constituent institutions of The University of North Carolina and makes modifications to existing authorizations for self-liquidating indebtedness projects, special indebtedness projects, and general obligation indebtedness projects. This bill would become effective when it become law.***

CURRENT LAW: *Special Indebtedness.* In 2004, the General Assembly voted to authorize the issuance of up to $388 million of special indebtedness to finance various projects at constituent institutions of The University of North Carolina. Commonly referred to as "certificates of participation," special indebtedness is nonvoted debt that may be secured only by an interest in State property being acquired or improved. There is no pledge of the State's faith and credit or taxing power to secure the debt. Thus, voter approval is not necessary for the borrowing. If the State defaulted on its repayments, no deficiency judgment could be rendered against the State, but the State property that serves as security could be disposed of to generate funds to satisfy the debt. The State could choose not to appropriate funds to repay the debt, but such a decision would have negative consequences for the State's credit rating.

The term "special indebtedness" is employed to cover the three forms that this type of debt can take: installment purchase (with or without certificates of participation), lease-purchase (with or without certificates of participation), and bonds. The particular form to be used for a given project will depend on its size, the nature of the property and the improvement, and other circumstances. Based on these circumstances, one form or another of special indebtedness may be the least expensive and most practical for the State to utilize. Article 9 of Chapter 142 of the General Statutes prohibits the issuance of special indebtedness except for projects specifically authorized by the General Assembly.

Before special indebtedness may be issued or incurred, the State Treasurer must certify that debt financing may be desirable for a specific project presented to it by the Department of Administration. Next, the Council of State must give preliminary approval. If preliminary approval is obtained, the Council of State must give final approval, setting out details such as the maximum amount to be financed, the maximum maturity, and the maximum interest rates. The maximum maturity may not exceed 40 years. The State Treasurer must approve the details of the financing, finding that the amount to be borrowed is adequate and not excessive and will not require an excessive increase in any State revenues to provide for repayment, and that the special indebtedness can be incurred or issued on terms favorable to the State. Finally, the State Treasurer must report to the Joint Legislative Commission on Governmental Operations at least five days before any special indebtedness is issued or incurred.

General Obligation Indebtedness. In 2000, the General Assembly voted to authorize the issuance of up to $2.5 billion of general obligation indebtedness to finance various projects at constituent institutions of The University of North Carolina. Pursuant to constitutional requirements, the issuance of the debt was approved by a referendum of the voters in the November 2000 elections.

The university improvement general obligation bonds are used for construction, improvement, and acquisition of capital facilities for constituent and affiliated institutions of The University of North

Carolina, including the Center for Public Television, the UNC Health Care System, the School of Science and Mathematics, and the North Carolina Arboretum. The full faith and credit and the taxing power of the State secure the general obligation bonds. These general obligation bonds are to be repaid from the General Fund. The maximum maturity on the bonds is 25 years.

BILL ANALYSIS: The bill is divided into three substantive parts. Part I of the bill deals with self-liquidating indebtedness, Part II deals with special indebtedness, and Part III deals with general obligation indebtedness.

Part I. Self-liquidating Projects. The Board of Governors of The University of North Carolina can issue two types of self-liquidating bonds: revenue bonds and special obligation bonds. Tax revenues may not be used to pay back either type of bond. Article 21 of Chapter 116 of the General Statutes authorizes the Board of Governors to issue revenue bonds for the types of projects enumerated in the Article. The types of projects for which revenue bonds may be issued include educational buildings, dormitories, recreational facilities, dining facilities, student centers, health care buildings, parking decks, etc. The revenue bonds are payable from rentals, charges, fees, and other revenues generated by the facility. Article 21B of Chapter 116 of the General Statutes authorizes the Board of Governors to issue revenue bonds for projects at the Centennial Campus, the Horace Williams Campus, and Millennial Campuses. The revenue bonds are payable from rentals, charges, fees, and other income generated by the facility. Article 3 of Chapter 116D of the General Statutes authorizes the Board of Governors to issue special obligation bonds payable with any sources of income or receipts of the Board of Governors or a constituent or affiliated institution, but not including tuition payments or appropriations from the General Fund from State revenues. In this instance, the bond proceeds could be used for construction, improvement, and acquisition of any capital facilities located at UNC constituent and affiliated institutions.

The purpose of Part I of this bill is to authorize the construction and financing of the capital improvements projects at various constituent institutions of The University of North Carolina. The projects authorized in this part may not be financed with funds appropriated from the State's General Fund, but may be financed with gifts, grants, receipts, self-liquidating indebtedness, other funds available to the constituent institutions, or a combination of any of those financing methods. The new self-liquidating projects that the Board of Governors may finance with revenue bonds, special obligation bonds, or both are listed in Section 1.2 of the part. Section 1.3 authorizes revenue bonds and special obligation bonds to be used for eight capital improvements projects for which indebtedness financing was previously authorized. This part provides additional options for financing the projects.

Section 1.4 authorizes the Director of the Budget, at the request of the Board of Governors, to authorize cost increases or decreases, or changes in the method of financing for the projects authorized by the act. The Director of the Budget may consult with the Joint Legislative Commission on Governmental Operations, but consultation is not required.

The current law governing UNC special obligation bonds requires that the specific projects and their costs be set forth in legislation approved by the General Assembly and that the maximum amount of special obligation bonds to be issued to finance the specific projects listed be stated. Sections 1.2 and 1.3 set forth the specific projects and their costs. Section 1.5 expressly states that the maximum principal amount of special obligation bonds to be issued shall not exceed the amounts listed in Sections 1.2 and 1.3 plus 5% for related additional costs for which bond proceeds are routinely used, such as issuance expenses, funding of reserve funds, and capitalized interest.

Sections 1.6 through 1.8 make some modifications to general law with respect to specific projects at the University of North Carolina at Chapel Hill and North Carolina Central University.

Part II. Revise University Special Indebtedness. This part makes some modifications to the allocations of the University special indebtedness approved by the General Assembly in 2004. This part makes the following changes:

- Clarifies that amounts allocated to the joint Millennial Campus of North Carolina Agricultural and Technical State University and the University of North Carolina at Greensboro may be used for construction of a research building.
- Changes the project at the University of North Carolina at Pembroke from an Optometry School facility to a Nursing and Allied Health building.
- Clarifies that amounts allocated to Western Carolina University may be used for construction of the North Carolina Center of Health and Aging.
- Clarifies that amounts allocated to Winston-Salem State University and the North Carolina School of the Arts may be used for construction of the Center for Design Innovation in the Piedmont Triad Research Park.

Part III. Revise University General Obligation Indebtedness. This part makes revisions to the allocations of the general obligation bonds authorized in 2000. The original legislation in 2000 contained specific allocations of bond proceeds for named projects at each of the constituent institutions of The University of North Carolina. That legislation expressly reserved the right for the General Assembly to change those allocations over time. In each of the years since the bonds were authorized, those allocations have been modified.

S1809e2-SMLY

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: Senate Bill 1809 (Second Edition)

SHORT TITLE: University Indebtedness Projects.

SPONSOR(S): Senator Kerr

FISCAL IMPACT ($Thousands)

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2006-07	**FY 2007-08**	**FY 2008-09**	**FY 2009-10**	**FY 2010-11**
REVENUES:					
Various General Fund	**See Assumptions and Methodology**				
Part I. Self-Liquidating				$5,013	$5,186
Part II. UNC Special Indebtedness		Up to $94	$256 - $667	$639 - $1,439	$646 - $1,454
Part III. UNC G.O. Indebtedness	**No General Fund impact**				
Various Receipt Supported	**See Assumptions and Methodology**				
POSITIONS (cumulative):		6.5	15.1	73.6	73.6

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: University of North Carolina Board of Governors

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

BILL SUMMARY:

May 23, 2006

S 1809. UNIVERSITY SELF-LIQUIDATING PROJECTS. Filed 5/23/06. TO AUTHORIZE THE CONSTRUCTION AND THE FINANCING, WITHOUT APPROPRIATIONS FROM THE GENERAL FUND, OF CERTAIN CAPITAL IMPROVEMENTS PROJECTS OF THE CONSTITUENT INSTITUTIONS OF THE UNIVERSITY OF NORTH CAROLINA. As title indicates. Authorizes the financing of the following projects with funds available from sources other than the General Fund or by special obligation bonds, revenue bonds, or both.

Appalachian State University
Central Dining Facility – Phase II $4,850,000

East Carolina University
Mendenhall Student Center and Ledonia Wright Cultural Center – Expansion and Renovation $39,000,000
Todd Dining Hall – Renovation $2,100,000
Brody School of Medicine – Renovations $1,200,000
Brody School of Medicine – Health Science Campus – Renovations $6,000,000

Elizabeth City State University
Residence Hall – Heating, Ventilating, and Air Conditioning Improvements $1,500,000

North Carolina State University
Derr Track – Renovation and Expansion – Phase II $2,500,000
Partners VI Building and Parking Deck $40,000,000
Centennial Campus Infrastructure $10,000,000

The University of North Carolina at Chapel Hill
Food Service Facilities – Renovation and Expansion $3,500,000
Science Complex – Phase II $92,200,000
Carmichael Auditorium – Renovation and Expansion $15,000,000
Research Resource Facility – Phase II $12,400,000
Residence Halls – Improvements $2,000,000
Woollen Gymnasium – Renovation $4,500,000
Boshamer Baseball Stadium – Improvements $14,000,000
Cogeneration Warehouse $500,000
Steam Infrastructure Improvements $55,700,000
Electrical Infrastructure Improvements $29,530,000
Bell Tower Development – Phase I $10,000,000
Global Education & International Studies Center – Improvements $2,500,000

The University of North Carolina at Charlotte
Prospector Hall – Renovation – Phase II $4,000,000
Residence Halls – Phase IX $38,800,000

The University of North Carolina at Greensboro
Residence Hall – Acquisition $29,500,000

The University of North Carolina at Wilmington
Residence Halls – Improvements $4,900,000

Western Carolina University
Residence Hall – Renovation and Expansion $1,000,000

Winston-Salem State University
Residence Hall – Renovation $4,500,000

Also authorizes the financing of the following supplemental projects with funds available from sources other than the General Fund or by special obligation bonds:

North Carolina State University
Residence Halls – Renovation – Supplement $11,500,000

Thompson Theater – Renovation and Expansion – Supplement $4,500,000

The University of North Carolina at Chapel Hill
Residence Halls – Improvements – Supplement $2,500,000
Botanical Garden Visitor Education Center – Supplement $5,000,000
Educational Foundation Office Building – Supplement $12,000,000
Cobb Residence Hall – Renovation – Supplement $5,116,000
Residence College – Phase II – Supplement $8,000,000
Rizzo Center – Expansion – Supplement $5,300,000

The University of North Carolina at Charlotte
Student Union – Supplement $10,000,000

The University of North Carolina at Greensboro
Parking Deck Addition – Supplement $1,000,000

The University of North Carolina at Pembroke
University Center Expansion – Supplement $2,000,000

The University of North Carolina at Wilmington
University Union Building – Expansion and Renovation –
Supplement $12,000,000

Western Carolina University
Dodson Cafeteria Replacement – Supplement $12,250,000
New Student Recreation Center – Supplement $6,200,000

Allows the UNC Board of Governors to issue special obligation bonds to pay acquisition and construction costs of projects authorized in act in an amount not to exceed the specified project costs plus 5%. With respect to UNC-CH Research Resources Facility capital project, makes exception to GS 116D-22(5) requirements as to location at the institution. With respect to the Major Infrastructure Improvements capital project at UNC-CH previously authorized by SL 2005-324, authorizes UNC-CH to accomplish a portion of the project by making a payment to Duke Power to acquire distribution capacity in improvements to three electrical substations and negotiating necessary easements. With respect to the $30 million Student Housing project at NCCU authorized by SL 2005-324, provides that NCCU may construct or purchase new buildings to meet its need for student housing.

June 1, 2006
S 1809. UNIVERSITY INDEBTEDNESS PROJECTS (NEW). Filed 5/23/06. Senate committee substitute makes the following changes to 1st edition. Designates the original provisions of the bill as Part I and adds new Parts II and III. The state was authorized in 2004 to issue special indebtedness under Article 9 of GS Chapter 142 for a variety of projects. Part II modifies the purposes for which this indebtedness may be used as follows: (1) authorizes use of the proceeds for construction of a research building at the joint Millennial Campus of NC A&T State University and UNC-Greensboro (was, pre-construction costs for facilities generally); (2) authorizes use of the proceeds for construction of a Nursing and Allied Health Building at UNC-Pembroke (was, pre-construction costs for an Optometry School); (3) authorizes the use of proceeds for construction of a building for the NC Center for Health and Aging (was, pre-construction costs for the Center); and (4) authorizes use of the proceeds for construction of a Center for Design Innovation for Winston-Salem State University and the NC School of the Arts (was, pre-construction costs) and deletes authorization for property acquisition for Winston-Salem State University programming related to biotechnology.

General Obligation bonds for UNC System projects were approved by the voters in 2000. Part III of the act reduces the scope of several projects and transfers the unused funds to other projects within each of the following campuses: NCSU, UNC-Chapel Hill, and WCU
Source: Bill Digest S.B. 1809 (05/23/0200).

ASSUMPTIONS AND METHODOLOGY:

Part I. Self-Liquidating Projects

Chart 1 on Page 3 lists each self-liquidating capital improvement project proposed by the Board of Governors of the University of North Carolina for FY 2006-07. There are 27 new capital improvement projects totaling $431,680,000 in improvements. The Board also requests the authority to fund $97,366,000 in supplements to 14 previously authorized self-liquidating capital projects. Six proposed projects will increase student fees to cover debt service payments. Three new projects at the University of North Carolina at Chapel Hill would require General Fund support for increased operating costs. Financial data for these charts was provided by the Division of Finance, University of North Carolina General Administration.

Chart 1

Campus	Project	Amount	Source of Funds	Effect of Debt on Students	Increase in Annual Operating Costs	Source of Operating Costs
Appalachian State University	Central Dining Facility - Phase II	$4,850,000	Food Service Receipts		$48,314	Food Service Receipts
East Carolina University	Mendenhall Center/ Wright Center Expansion and Renovation	$39,000,000	Debt Service Fee	$150/year	$402,269	Student Activities Receipts
East Carolina University	Todd Dining Hall	$2,100,000	Food Service Receipts			
East Carolina University	Brody School of Medicine - Renovations	$1,200,000	Medicare Receipts			
East Carolina University	Brody School of Medicine - Health Science Campus Renovations	$6,000,000	Medicare Receipts and Medicare Practice Plan Receipts			
North Carolina State University	Derr Track - Renovation and Expansion - Phase II	$2,500,000	Debt Service Fee	$15/year	$52,223	Athletic Receipts
North Carolina State University	Partners VI Building and Parking Deck	$40,000,000	Centennial Campus Receipts		$1,319,392	Centennial Campus Receipts

Campus	Project	Amount	Source of Funds	Effect of Debt on Students	Increase in Annual Operating Costs	Source of Operating Costs
North Carolina State University	Centennial Campus Infrastructure	$10,000,000	Centennial Campus Receipts			
University of North Carolina at Chapel Hill	Food Services Facilities – Renovation and Expansion	$3,500,000	Food Service Receipts			
University of North Carolina at Chapel Hill	Science Complex – Phase II	$92,200,000	Facilities and Administrative Receipts		$3,138,323	General Fund
University of North Carolina at Chapel Hill	Carmichael Auditorium – Renovation and Expansion	$15,000,000	Student Fees and Gifts		$262,658	General Fund
University of North Carolina at Chapel Hill	Research Resource Facility – Phase II	$12,400,000	Facilities and Administrative Receipts		$1,611,990	General Fund
University of North Carolina at Chapel Hill	Residence Halls Improvements	$2,000,000	Housing Receipts			
University of North Carolina at Chapel Hill	Woollen Gymnasium Renovation	$4,500,000	Student Fees			
University of North Carolina at Chapel Hill	Boshamer Baseball Stadium Improvements	$14,000,000	Private Gifts			
University of North Carolina at Chapel Hill	Cogeneration Warehouse	$500,000	Utility Receipts			
University of North Carolina at Chapel Hill	Steam Infrastructure Improvements	$55,700,000	Utility Receipts			
University of North Carolina at Chapel Hill	Electrical Infrastructure Improvements	$29,530,000	Utility Receipts			

Campus	Project	Amount	Source of Funds	Effect of Debt on Students	Increase in Annual Operating Costs	Source of Operating Costs
University of North Carolina at Chapel Hill	Bell Tower Development Phase I	$10,000,000	Facilities and Administrative Receipts			
University of North Carolina at Chapel Hill	Global Education and International Studies Center Improvements	$2,500,000	Private Gifts			
University of North Carolina at Charlotte	Prospector Hall Renovation Phase II	$4,000,000	Food Service Receipts		$107,310	Food Service Receipts
University of North Carolina at Charlotte	Residence Halls Phase IX	$38,800,000	Housing Receipts		$1,199,654	Housing Receipts
University of North Carolina at Greensboro	Residence Hall Acquisition	$29,500,000	Housing and Parking Receipts		$960,562	Housing and Parking Receipts
University of North Carolina at Wilmington	Residence Halls Improvements	$4,900,000	Housing Receipts			
Western Carolina University	Residence Hall Renovation and Expansion	$1,000,000	Housing Receipts			
Winston Salem State University	Residence Hall Renovation	$4,500,000	Housing Receipts			

Supplemental Funding for Previously Authorized Projects

Campus	Project	Amount	Source of Funds	Effect of Debt on Students	Increase in Annual Operating Costs	Source of Operating Costs
North Carolina State University	Residence Halls Renovation	$11,500,000	Housing Receipts			
North Carolina State University	Thompson Theater Renovation and Expansion	$4,500,000	Debt Service Fee	$20/year	$105,426	Student Activities Receipts

Campus	Project	Amount	Source of Funds	Effect of Debt on Students	Increase in Annual Operating Costs	Source of Operating Costs
University of North Carolina at Chapel Hill	Residence Halls Improvements	$2,500,000	Housing Receipts			
University of North Carolina at Chapel Hill	Botanical Garden Visitor Education Center	$5,000,000	Private Gifts			
University of North Carolina at Chapel Hill	Educational Foundation Office Building	$12,000,000	Private Gifts		$387,976	Gifts and Athletic Receipts
University of North Carolina at Chapel Hill	Cobb Residence Hall Renovation	$5,116,000	Housing Receipts			
University of North Carolina at Chapel Hill	Residence College Phase II	$8,000,000	Housing Receipts			
University of North Carolina at Chapel Hill	Rizzo Center Expansion	$5,300,000	Rizzo Center Receipts			
University of North Carolina at Charlotte	Student Union	$10,000,000	Auxiliary Receipts			
University of North Carolina at Greensboro	Parking Deck Addition	$1,000,000	Parking Receipts			
University of North Carolina at Pembroke	University Center Expansion	$2,000,000	Debt Service Fee	$20/year		
University of North Carolina at Wilmington	University Union Building Expansion and Renovation	$12,000,000	Debt Service Fee			
Western Carolina University	Dodson Cafeteria Replacement	$12,250,000	Debt Service Fee	$113/year		
Western Carolina University	New Student Recreation Center	$6,200,000	Debt Service Fee	$74/year		

Cost of new capital improvement projects = $431,680,000
Cost of supplements to previously authorized projects = $97,366,000
Cost of capital improvements for all projects = $529,046,000

Inflation - General Fund operating expenditures were inflated by calculating a straight line dollar increase measured from the first year of operation and escalated using the 20-year average operating expenditure estimate provided by the University of North Carolina General Administration.

Indebtedness Funding Methods:
Chart 2 summarizes the total debt authority proposed by Senate Bill 1809 and the source of funds identified to service the proposed debt.

Chart 2	
Sources of Funding	**Principal**
Facilities and Administrative Receipts	$102,200,000
Utility Receipts	$85,730,000
Debt Service Fees	$78,450,000
Housing Receipts	$73,916,000
Centennial Campus Receipts	$50,000,000
House and Parking Receipts	$29,500,000
Student Fees	$19,500,000
Auxiliary Receipts	$10,000,000
Dining Receipts	$9,600,000
Medicare Education Receipts	$7,200,000
Rizzo Center Receipts	$5,300,000
Parking Receipts	$1,000,000

Part II. Revise University Special Indebtedness
The proposed revision to Session Law 2004-179 expands the authorized capital expenditures to include the construction of four new facilities in the University system. The revision also replaces the proposed School of Optometry at the University of North Carolina at Pembroke with a proposed School of Nursing. Under current law, the State Treasurer, with the approval of the Council of State, can issue special indebtedness for land acquisition, planning, design, and site preparation for three of the four capital projects proposed in this PCS. While this PCS expands the debt authorization of S.L. 2004-179 to include construction expenditures, this PCS does not increase the authorized debt amount for these projects. **Without an increase in the debt authority, no impact to General Fund debt service payments is anticipated.**

By authorizing the construction of these facilities, the proposed revision to S.L. 2004-179 will result in an increased operating impact. Each of the proposed facilities fulfills an academic purpose and the University anticipates a General Fund operating impact for each of the facilities. Please see Chart 3 for detail

information for each proposed project. Financial data for this chart was provided by the Division of Finance, University of North Carolina General Administration.

Chart 3					
Campus	**Project**	**Total Project Cost**	**Source of Funds**	**Annual Operating Costs**	**Source of Operating Costs**
Western Carolina University / UNC-Asheville / Mountain Area Health Education Consortium	Center for Health and Aging	$20,382,000	General Fund supported COPs ($10,000,000)/ MAHEC Funding	$420,114	General Fund and other sources. General Fund support to be determined
UNC-Greensboro / NC Agricultural & Technical University	Millennial Campus Research Building	$10,000,000	General Fund supported COPs	$376,086	General Fund and other sources. General Fund support to be determined
University of North Carolina at Pembroke	Nursing and Allied Health Building	$10,000,000	General Fund supported COPs	$351,849	$351,849
Winston Salem State University / NC School of the Arts	Center for Design Innovation	$10,000,000	General Fund supported COPs	$287,424	$287,424

Inflation - General Fund operating expenditures were inflated by 1% per year. Similar facilities proposed as self-liquidating projects in Part I of this PCS were estimated to have operating budgets that increased by roughly 1% per year. This inflation factor was applied to the four proposed projects in Part II of this PCS.

Part III. Revise University General Obligation Indebtedness

According to the Division of Finance for the University of North Carolina General Administration, **no General Fund operating impact** is anticipated from the proposed modifications to Session Law 2000-3.

SOURCES OF DATA: The University of North Carolina General Administration

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Jim Klingler

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: June 5, 2006

Official
Fiscal Research Division
Publication

Signed Copy Located in the NCGA Principal Clerk's Offices

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☒Committee Substitute for

SB 1809 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE CONSTRUCTION AND THE FINANCING, WITHOUT APPROPRIATIONS FROM THE GENERAL FUND, OF CERTAIN CAPITAL IMPROVEMENTS PROJECTS OF THE CONSTITUENT INSTITUTIONS OF THE UNIVERSITY OF NORTH CAROLINA AND TO MAKE REVISIONS TO PREVIOUSLY AUTHORIZED INDEBTEDNESS FOR VARIOUS CAPITAL IMPROVEMENTS PROJECTS OF THE CONSTITUENT INSTITUTIONS OF THE UNIVERSITY OF NORTH CAROLINA.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S 1

SENATE BILL 1852

Short Title:	Incorporate Midway.	(Local)
Sponsors:	Senator Bingham.	
Referred to:	Finance.	

May 25, 2006

A BILL TO BE ENTITLED

AN ACT TO INCORPORATE THE TOWN OF MIDWAY.

The General Assembly of North Carolina enacts:

SECTION 1. A Charter for the Town of Midway is enacted to read:

"CHARTER OF THE TOWN OF MIDWAY.

"ARTICLE I. INCORPORATION AND CORPORATE POWERS.

"Section 1.1. **Incorporation and Corporate Powers.** The inhabitants of the Town of Midway are a body corporate and politic under the name 'Town of Midway'. The Town of Midway has all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general laws of North Carolina.

"ARTICLE II. CORPORATE BOUNDARIES.

"Section 2.1. **Town Boundaries.** Until modified in accordance with law, the boundaries of the Town of Midway are as follows:

Beginning at a point in the centerline intersection of Secondary Road # 1509 (Follansbee Road) and running thence in an easterly direction following the Forsyth County/Davidson County line to the southwest comer of PIN#6842-03-10-0045; thence in an easterly and northerly direction along the western boundary and in an easterly direction along the northern boundary of PIN#6842-03-10-0045; thence in an easterly direction along the northern boundary of PIN#6842-03-10-2004; thence in an easterly direction along the northern boundary of PIN#6842-03-10-4023; thence in an easterly direction across Secondary Road #3022 (Briarcreek Drive); thence in an easterly direction along the northern boundary of the following 3 parcels, (1) PIN#6841-01-19-7907, (2) PIN#6841-01-19-8699, (3) PIN#6841-01-29-1926; thence in an easterly direction across Secondary Road # 1975 (Hayes Road); thence in an easterly direction along the northern boundary of the following 3 parcels, (1) PIN#6841-01-29-6811, (2) PIN#6841-01-29-8897, (3) PIN#6841-01-29-9888; thence in a northerly direction along the western boundary and in an easterly direction along the northern boundary ofPIN#6842-03-302304; thence in an easterly direction along the northern boundary of the following 8 parcels, (1) PIN#6842-03-30-3899, (2)

PIN#6842-03-30-4898, (3) PIN#6842-03-30-6827, (4) PIN#6842-03-30-7817, (5) PIN#6842-03-30-7886, (6) PIN#6842-03-30-8886, (7)PIN# 6842-03-30-9896, (8) FIIM#6842-U3-4U-U8ys; thence in an easterly direction along the northern boundary of PIN#6842-03-40-2846 to the southwest comer of PIN#6842-03-41-3070; thence in a northerly direction along the western boundary and in an easterly direction along the northern boundary of PIN#6842-03-41-3070 to the centerline of Secondary Road #1706 (Old Lexington Road); thence continuing on from the centerline intersection of Old Lexington Road in a southerly direction along the eastern boundary of the following 10 parcels, (1) PIN#6842-03-40-4932, (2) PIN#6842-03-40-4769, (3) PIN#6842-03-40-5576, (4) PIN#6842-03-40-9411, (5) PIN#6842-03-40-7215, (6) PIN#6842-03-40-7143, (7) PIN#6842-03-40-7074, (8) PIN#6841-01-49-8923, (9) PIN#6841-01-49-8865, (10) PIN#6841-01-49-8793 to the centerline intersection of Secondary Road #1711 (Gumtree Road); thence continuing on from the centerline intersection of Gumtree Road in a westerly direction along the southern boundary of the following 3 parcels, (1) PIN#6841-01-49-8793, (2) PIN#6841-01-49-6962, (3) PIN#6841-01-49-6651 to the centerline intersection of Secondary Road #2962 (Ridgeview Drive); thence continuing on from the centerline intersection of Ridgeview Drive in a southerly direction along the eastern boundary of the following 7 parcels, (1) PIN#6841-01-49-5277, (2) PIN#6841-01-49-5140, (3) PIN#6841 -01 48-5977, (4) PIN#6841-01-48-5 894, (5) PIN#6841-01-48-6722, (6) PIN#6841-01-48-6631, (7) PIN#6841-01-48-6560; to the northeast corner of PIN#6841-01-48-8108; thence in a southerly direction along the eastern boundary of PIN#6841-01-48-8108 to the northern boundary of PIN#6841-01-47-8793; thence in an easterly and southerly direction along the northern and eastern boundary of PIN#6841-01-47-8793 to the northern boundary of PIN#6841-01-46-8 846; thence in an easterly, southerly and westerly direction along the boundary Of PIN#6841-01-46-8846 to the northeast comer of PIN#6841-01-46-9114; thence in a southerly direction along the eastern boundary of PIN#6841-01-46-9114 to the northern boundary of PIN#6841-02-55-2265; thence in an easterly direction along the northern boundary of the following 3 parcels, (1) PIN#6841-02-55-2265, (2) PIN#6841-02-55-5263, (3) PIN#6841-02-55-6253; thence in an easterly direction across Secondary Road #2917 (Laura Drive); thence in an easterly direction along the northern boundary and in a southerly direction along the eastern boundary of PIN#6841-02-55-8267; thence in a southerly direction along the eastern boundary ofPIN#6841-02-55-8168 and PIN#6841-02-55-8069; thence in a southerly direction along the eastern boundary of PIN#6841-04-54-8865 to the northwest corner of PIN#6841-04-64-0811; thence in an easterly direction along the northern boundary of the following 7 parcels, (1) PIN#6841-0464-0811, (2) PIN#6841-04-64-1821, (3) PIN#6841-04-64-2831, (4) PIN#6841-04-64-3 841, (5) PIN#6841-04-64-6800, (6) PIN#6841-04-64-8704, (7) PIN#6841-04-74-0789 to the centerline' intersection of Secondary Road #1776 (Old Thomasville Road); thence continuing on from the centerline intersection of Old Thomasville Road in a southerly direction along the eastern boundary of PIN#6841-04-74-0789 and PIN#6841-04-74-2509 to the centerline intersection of Secondary Road # 1719 (Tom Livengood Road); thence continuing on from the centerline intersection of Tom Livengood Road in a southwesterly direction

along the eastern boundary of the following 10 parcels, (1) PIN#6841-04-74-2355, (2) PIN#6841-04-74-2117, (3) PIN#6841-04-74-1049, (4) PIN#6841-04-74-1025, (5) PIN#6841-04-73-0979,(6) PIN#6841-04-73-0912, (7) PIN#6841-04-63-9739, (8) PIN#6841-04-63-8656, (9) PIN#6841-04-63-7561, (10) PIN#6841-04-63-5289; thence across Secondary Road (Brookdale Drive) and continuing on from the centerline intersection of Tom Livengood Road in a southwesterly direction along the eastern boundary of the following 18 parcels, (1) PIN#6841-04-63-5037, (2) PIN#6841-04-62-5 83 7, (3) PIN#6841-04-62-5735, (4) PIN#6841-04-62-5 623, (5) PIN#6841-04-62-5501, (6) PIN#6841-04-62-4400, (7) PIN#6841-04-52-823 0, (8) PIN#6841-04-61-3700, (9) PIN#6841-04-61-2589, (10) PIN#6841-04-61-2456, (11) PIN#6841-04-61-2324, (12) PIN#6841-04-61-2201, (13) PIN#6841-04-52-8230, (14) PIN#6841-04-50-7908, (15) PIN#6841-04-50-5992, (16) PIN#6841-04-50-4876, (17) PIN#6841-04-50-3 862, (18) PIN#6841-04-50-1777 to the centerline intersection of Secondary Road # 1715 (Norman Shoaf Road); thence continuing on from the centerline intersection of Norman Shoaf Road in a southeasterly direction along the western boundary of PIN#6841-04-50-63 83; thence continuing on from the center line intersection of Norman Shoaf Road in a southeasterly direction intersecting PIN#6840-02-79-0248 and continuing in an easterly direction along the southern boundary of PIN#6 840-02-790248 to the northwest comer ofPIN#6840-02-77-5742; thence in a southerly, westerly, and easterly direction along the western and southern boundary of PIN#6840-02-77-5742 to the western comer of PIN#6840-02-77-5455; thence in a easterly direction along the northern boundary of PIN#6840-02-77-5455; thence in a southerly direction along the eastern boundary of PIN#6840-02-77-7311; thence in a southerly direction along the eastern boundary of PIN#6840-02-76-7881 to the centerline intersection of Secondary Road #1720 (Spry Road); thence continuing on from the centerline intersection of Spry Road in a westerly direction along the northern boundary of PIN#6840-02-76-9255; thence in a southerly direction along the western boundary of PIN#6840-02-76-9255; thence in a southerly direction along the western boundary of PIN#6840-02-75-9770; thence in a southerly direction along the western boundary of PIN#6840-02-85-8453 to the northeast corner of PIN#6840-04-64-8862; thence in a westerly direction along the northern boundary of PIN#6840-04-64-8862 to the centerline intersection of Secondary Road # 1715 (Norman Shoaf Road); thence continuing on from the centerline intersection of Norman Shoaf Road in a southerly direction along the western boundary of PIN#6840-04-64-8862 and PIN#6840-04-64-6336 to the centerline intersection of Secondary Road # 1802 (Midway School Road); thence continuing on from the centerline intersection of Midway School Road in a westerly direction along the southern boundary of the following 16 parcels, (1) PIN#6840-04-64-2222, (2) PIN#6840-04-64-0223, (3) PIN#6840-04-54-8188, (4) PIN#6840-04-54-7111, (5) PIN#6840-04-54-5038, (6) PIN#6840-04-54-2564, (7) PIN#6840-04-54-1150, (8) PIN#6840-03-44-8062, (9) PIN#6840-03-43-5929, (10) PIN#6840-03-43-4765, (11) PIN#6840-03-43-2782, (12) PIN#6840-03-43-1648, (13) PIN#6840-03-43-0622, (14) PIN#6840-03-33-9549, (15) PIN#6840-03-33-8556, (16) PIN# 6840-03-33-7552; thence in a westerly direction across Secondary Road # 1945 (Gardner Court); thence continuing on from the

centerline intersection of Midway School Road in a westerly direction along the southern boundary of the following 10 parcels, (1) PIN#6840-03-33-4454, (2) PIN#6840-03-33-4454, (3) PIN#6840-03-33-3258, (4) PIN#6840-03-33-2244, (5) PIN#6840-03-33-1251, (6) PIN#6840-03-33-0473, (7) PIN#6840-03-23-9075, (8) PIN#6840-03-23-9018, (9) PIN#6840-03-23-7072, (10) PIN#6840-03-23-4099; thence in a westerly direction across PIN#6840-03-22-0626; thence in a westerly direction across Secondary Road # 18 03 (Ralph Craver Road); thence in a westerly direction across PIN#6840-03-22-0626; thence continuing on from the centerline intersection of Midway School Road in a westerly direction along the southern boundary of the following 7 parcels, (1) PIN#6840-03-13-8251, (2) PIN#6840-03-13-6851, (3) PIN#6840-03-13-5553, (4) PIN#6840-03-13-4662, (5) PIN#6840-03-13-6851, (6) PIN#6840-03-14-2040, (7) PIN#684003-14-1037 to the northeast corner of PIN#6840-03-03-6652; thence in a southerly, westerly, and northerly direction along the eastern, southern, and western boundary of PIN#6840-03-03-6652 to the southeast comer of PIN#6840-03-03-2805; thence in a westerly and northerly direction along the southern and western boundary of PIN#6840-03-03-2805 to the southeast corner of PIN#6830-04-93-9938; thence in a westerly direction along the southern boundary of PIN#6830-04-93-9938; thence in a westerly direction along the southern boundary of PIN#6830-04-93-6968 to the centerline intersection of Secondary Road #2932 (Old US Hwy 52); thence continuing on from the centerline intersection of Old US Hwy 52 in a southerly direction along the eastern boundary of the following 10 parcels, (1) PIN#683 0-04-94-3101, (2) PIN#6830-04-94-2062, (3) PIN#6830-04-93-2940, (4) PIN#6830-04-93-2735, (5) PIN#6830-04-93-1645, (6) PIN#6830-04-93-1515, (7) PIN#6830-04-83-8240, (8) PIN#6830-04-82-8747, (9) PIN#6830-04-82-7695, (10) PIN#6830-04-82-7590; thence in a southerly direction across Secondary Road # 1523 (Ralph Miller Road); thence continuing on from the centeriine intersection of Old US Hwy 52 in a southerly direction along the eastern boundary of PIN#6830-04-81-3918; thence in a westerly direction along the southern boundary of PIN#6830-04-81-3918; thence in a westerly direction along the southern boundary of the following 12 parcels, (1) PIN#6830-04-81-0812, (2) PIN#6830-04-81-3918, (3) PIN#6830-04-72-6182, (4) PIN#6830-04-72-4305, (5) PIN#6830-04-72-0268, (6) PIN#6830-04-62-9264, (7) PIN#683 0-04-62-8149, (8) PIN#6830-04-62-7149, (9) PIN#6830-04-62-6126, (10) PIN#6830-04-62-3192, (11) PIN#6830-04-62-0134, (12) PIN#683 0-04-52-7075; thence in a northerly direction along the western boundary of the following 6 parcels, (1) PIN#6830-04-52-7075, (2) PIN#6830-04-52-8118, (3) PIN#6830-04-52-7267, (4) PIN#6830-04.-52-7359, (5) PIN#6830-04-52-6499, (6) PIN#6830-04-52-6682; thence in a westerly direction across Secondary Road (Old Oak Court) to the southwest corner of PIN#6830-04-53-6120; thence in a northerly direction along the western boundary of the following 4 parcels, (1) PIN#6830-04-53-6120, (2) PIN#6830-04-53-8234, (3) PIN#683 0-04-53 7556, (4) PIN#6830-04-53-7813; thence in an easterly direction along the northern boundary of the following 3 parcels, (1) PIN#6830-04-53-9934, (2) PIN#6830-04-63-1833, (3) PIN#6830-04-63-4616; thence in an easterly and northerly direction along the northern and western boundary of PIN#6830-04-73-4213; thence in an easterly direction along the northern boundary of PIN#6830-04-73-4213 and

PIN#6830-04-74-6129 to the southeast corner of PIN#6830-04-74-2712; thence in a northerly, easterly, and westerly direction along the eastern and northern boundary of PIN#6830-04-74-2712 to the northeast corner of PIN#6830-02-65-9329; thence to the centerline intersection of Secondary Road # 15 06 (Eller Road); thence continuing on from the centerline intersection of Eller Road in a westerly direction along the southern boundary of PIN#6830-02-66-7211 and PIN#6830-02-66-1859; thence in a westerly direction across US Hwy 52; thence continuing on from the centerline intersection of Eller Road in a westerly direction along the southern boundary of PIN#6830-01-46-8112; thence in a westerly direction across Secondary Road #1507 (David Smith Road); thence continuing on from the centerline intersection of Eller Road in a westerly direction along the southern boundary of the following 6 parcels, (1) PIN#6830-01-45-3888, (2) PIN#6830-01-45-2913, (3) PIN#6830-01-45-1903, (4) PIN#6830-01-45-0914, (5) PIN#6830-01-35-9914, (6) PIN#6830-01-35-8916; thence continuing on from the centerline intersection of Eller Road in a westerly direction across PIN#6830-03-34-1105; thence continuing on from the centerline intersection of Eller Road in a westerly direction along the southern boundary of the following 5 parcels, (1) PIN#6830-01-35-2729, (2) PIN#6830-01-3 5-0880, (3) PIN#6830-01-25-8894, (4) PIN#6830-01-26-6274, (5) PIN#6830-01-26-0321; thence continuing on from the centerline intersection of Eller Road in a westerly direction across PIN#6830-01-16-7699; thence continuing on from the centerline intersection of Eller Road in a westerly direction along the southern boundary ofPIN#6830-01-16-3314 and PIN'#6830-01-16-2324; thence continuing on from the centerline intersection of Eller Road in a westerly direction across Secondary Road #3229 (Woodfield Drive); thence continuing on from the centerline intersection of Eller Road in a westerly direction along the southern boundary and in a northerly direction along the western boundary of PIN#6830-01-16-0327; thence in a northerly direction along the western boundary of the following 4 parcels, (1) PIN#6830-01-16-0524, (2) PIN#683 0-01-16-0634, (3) PIN#6830-01-16-0735, (4) PIN#6830-01-16-0835; thence in a. northerly direction across Secondary Road #323 0 (Woodwind Drive); thence in a northerly direction along the western boundary of the following 2 parcels, (1) PIN#683 0-01-07-9199, (2). PIN#683 0-01-17-0404; thence in a northerly direction across Secondary Road #3225 (Meadolee Lane); thence in a northerly direction along the western boundary of PIN#6830-01-17-0708; thence in a northerly and easterly direction along the western and northern boundary ofPIN#6830-01-18-2180 to the southwest corner of PIN#6830-01-18-6453; thence in a northerly and easterly direction along the western and northern boundary of PIN#6830-01-18-6453 to the northwest comer of PIN#6830-01-18-8356; thence in an easterly direction along the northern boundary of the following 2 parcels, (1) PIN#6830-01-18-8356, (2) PIN#6830-01-18-9356; thence in an easterly direction across Secondary Road #3202 (Laurel Court); thence in an easterly direction along the northern boundary of the following 24 parcels, (1) PIN#6830-01-28-1306, (2) PIN#6830-01-28-2306, (3) PIN#6830-01-28-3314, (4) PIN#6830-01-28-4313, (5) PIN#6830-01-28-5313, (6) PIN#6830-01-28-6312, (7) PIN#6830-01-28-7312, (8) PIN#6830-01-28-8311, (9) PIN#6830-01-28-9311, (10) PIN#6830-01-3 8-0301, (II) PIN#6830-01-38-1310, (12) PIN#6830-01-38-2310, (13)

PIN#6830-01-38-3219, (14) PIN#6830-01-38-4219, (15) PIN#6830-01-38-5219, (16) PIN#6830-01-38-6331, (17) PIN#6830-01-38-73 80, (18) PIN#6830-01-3 8-9269, (19) PIN#6830-01-48-1227, (20) PIN#6830-01-48-2217,(21) PIN#6830-01-48-3217,(22) PIN#6830-01-48-4320, (23) PIN#6830-01-48-5320, (24) PIN#6830-01-48-6331; thence to the centerline intersection of Secondary Road #1507 (David Smith Road); thence continuing on from the centerline Intersection of David Smith Road in a northerly direction along the western boundary of the following 6 parcels, (1) PIN#6830-01-48-83 87, (2) PIN#6830-02-58-1504, (3) PIN#6830-01-48-9824, (4) PIN#6830-01 -49-9027, (5) PIN#6830-01-49-9324, (6) PIN#6830-01-49-9028; thence in a northerly direction across Secondary Road #1583 (Pin Oak Drive); thence continuing on from the centerline intersection of David Smith Road in a northerly direction along the western boundary of the following 3 parcels, (1) PIN#6831-04-50-2112, (2) PIN#6831-04-50-2475, (3) PIN#6831-04-50-2762 to the centerline intersection of Secondary Road #1508 (Hickory Tree Road); thence continuing on from the centerline intersection of Hickory Tree Road m a Northwesterly direction along the northeast boundary of PIN#6831-03-40-8970; thence Continuing on from the centerline intersection of Hickory Tree Road to the centerline intersection of Secondary Road # 1511 (Hartman Road); thence continuing on from the centerline intersection of Hartman Road in a westerly direction along the southern boundary of the following 8 parcels, (1) PIN#6831-03-31-3765, (2) PIN#6831-03-21-9893, (3) PIN#6831-03-21-7878, (4) PIN#6831-03-21-6970, (5) PIN#6831-03-20-1695, (6) PIN#6831-03-21-0993, (7) PIN#6831-03-22-6885, (8) PIN#6831-03-11-8939; thence continuing on from the centerline intersection of Hartman Road in a southerly direction to the northeast corner of PIN#6831-03-11-7756; thence in a southerly direction along the eastern boundary of PIN#6831-03-11-7756; thence in a southerly direction along the eastern boundary of PIN#6831-03-11-7655; thence in a southerly direction along the eastern boundary and in a westerly direction along the southern boundary of PIN#6831-03-11-7542 to the centerline intersection of Secondary Road (Midpines Drive); thence continuing on from the centerline intersection of Midpines Drive in a southerly direction along the eastern boundary of the following 3 parcels, (1) PIN#6831-03-11-5411, (2) PIN#6831-03-11-5300, (3) PIN#6831-03-11-4197; thence across Secondary Road (Sinkland Drive); thence continuing on from the centerline intersection of Midpines Drive in a southerly direction along the eastern boundary and in a westerly direction along the southern boundary ofPIN#6831-0310-5913; thence in a westerly direction along the southern boundary of the following 3 parcels, (1) PIN#6831-03-10-3983, (2). PIN#6831-03-10-2943, (3) PIN#6831-03-10-0993; thence in a westerly direction along the southern boundary and in a northerly direction along the western boundary of PIN#6831-03-00-9915; thence across Sinkland Drive to the southeast comer of PIN#6831-03-01-6275; thence in a westerly direction along the southern boundary of PIN#6831-03-01-6275 to the centerline intersection of Secondary Road #1505 (Payne Road); thence continuing on from the centerline intersection of Payne Road in a northerly direction along the western boundary of the following 5 parcels, (1) PIN#6831-03-01-6275, (2) PIN#6831-03-01-7418, (3) PIN#6831-03-01-7614, (4) PIN#6831-03-01-7726, (5) PIN#6831-03-02-7030 to the centerline intersection of

Secondary Road # 1511 (Hartman Road); thence continuing on from the centerline intersection of Hartman Road in a westerly direction along the southern boundary of PIN#6831-03-02-6411 to the centerline intersection of Secondary Road #15 10 (North Payne Road); thence continuing on from the centerline intersection of North Payne Road in a northerly direction along the western boundary of the following 6 parcels, (1) PIN#6831-03-02-6411, (2) PIN#6831-03-13-1651, (3) PIN#6831-03-03-6348, (4) PIN#6831-03-13-1651, (5)PIN#6831-03-04-8802, (6) PIN#6831-03-04-8901; thence across Secondary Road (Havenwood Drive); thence continuing on from the centerline intersection of North Payne Road in a northerly direction along the western boundary of the following 4 parcels, (1) PIN#6831-01-05-8017, (2) PIN#6831-01-05-8117, (3) PIN#6831-01-05-8227, (4) PIN#6831-01-05-8336; thence across Secondary Road (Cale Bradley Court); thence continuing on from the centerline intersection of North Payne Road in a northerly direction along the western boundary of the following 6 parcels, (1) PIN#6831-01-05-8541, (2) PIN#6831-01-05-8641, (3) PIN#6831-01-05-8741, (4) PIN#6831-01-05-8851, (5) PIN#6831-01-05-8951, (6) PIN#6831-01-06-8073; thence in an easterly direction along the northern boundary of PIN#6831-01-06-8073; thence across Secondary Road #1508 (Hickory Tree Road) to the southern comer of PIN#6831-01-06-9382; thence in a northerly direction along the eastern boundary ofPIN#6831-01-06-9382; thence in a northerly and easterly direction along the southern and eastern boundary of PIN#6831-01-17-4633 to the southwest comer of PIN#6831-01-48-3804; thence in an easterly direction along the southern boundary of PIN#6831-01-48-3804 to the centerline intersection of US Hwy 52; thence continuing on from the centerline intersection of US Hwy 52 in a northerly direction along the western boundary of the following 7 parcels, (1) PIN#6831-01-48-3804, (2) PIN#6831-01-49-3076, (3) PIN#6831-01-38-1662, (4) PIN#6831-01-49-2319, (5) PIN#6831-01-49-1574, (6) PIN#6831-01-49-1626, (7) PIN#6831-01-49-0891 to the centerline intersection of Secondary Road #1509 (Follansbee Road), which is the beginning.

All references to the PIN # herein are references to Davidson county tax map system as of April 11,2005. A copy shall be maintained in the records of the Town of Midway.

"Section 2.2. **Annexation.** (a) The Town of Midway shall not extend its boundaries into Forsyth County by annexation pursuant to Article 4A of Chapter 160A of the General Statutes.

(b) The Town of Midway shall not extend its boundaries into Davidson County by annexation to the west of Line B or to the north of Line C as shown on the map dated March 24, 2005, entitled "Proposed Midway Incorporation," as prepared by the City of Winston-Salem, unless the annexation is undertaken pursuant to an annexation agreement between the Town of Midway and the City of Winston-Salem.

"ARTICLE III. GOVERNING BODY.

"Section 3.1. **Structure of Governing Body; Number of Members.** The governing body of the Town of Midway is the Mayor and Town Council, which shall have five members.

"Section 3.2. **Temporary Officers.** Until the organizational meeting after the initial election in 2007 provided for by Section 4.1 of this Charter, Norman Wilkes is hereby appointed Mayor and Larry Jenkins, Betty Nifong, Steve Stokes, Barbara Temple, and Carl Tuttle are appointed Council Members of the Town of Midway, and they shall possess and exercise the powers granted to the governing body until their successors are elected or appointed and qualified pursuant to this Charter. If any person named in this section is unable to serve, the remaining temporary officers shall, by majority vote, appoint a person to serve until the initial municipal election is held in 2007.

"Section 3.3. **Manner of Electing Town Council; Term of Office.** The qualified voters of the entire Town shall elect the members of the Town Council and, except as provided in this section, they shall serve four-year terms. In 2007, the two candidates receiving the highest numbers of votes shall be elected to four-year terms and the three candidates receiving the next highest numbers of votes shall be elected to two-year terms. In 2009, and quadrennially thereafter, three members shall be elected to four-year terms. In 2011, and quadrennially thereafter, two members shall be elected to four-year terms.

"Section 3.4. **Manner of Electing Mayor; Term of Office; Duties.** The qualified voters of the entire Town shall elect the Mayor. In 2007, and quadrennially thereafter, the Mayor shall be elected for a term of four years. The Mayor shall be the official head of Town government and shall preside at all meetings of the Council, shall have the right to vote only when there is an equal division on any question or matter before the Council, and shall exercise the powers and duties conferred by law or as directed by the Council.

"ARTICLE IV. ELECTIONS.

"Section 4.1. **Conduct of Town Elections.** Elections shall be conducted on a nonpartisan basis and results determined by a plurality as provided in G.S. 163-292.

"ARTICLE V. ADMINISTRATION.

"Section 5.1. **Town to Operate Under Mayor-Council Plan.** The Town shall operate under the Mayor-Council form of government as provided in Part 3 of Article 7 of Chapter 160A of the General Statutes.

"Section 5.2. **Town Attorney.** The Council shall appoint a Town Attorney licensed to practice law in North Carolina. It shall be the duty of the Town Attorney to represent the Town, advise Town officials, and perform other duties as required by law or as directed by the Town Council. The Town Attorney shall serve at the pleasure of the Town Council.

"Section 5.3. **Town Clerk.** The Council shall appoint a Town Clerk who shall perform duties as required by law or as directed by the Town Council. The Town Clerk shall serve at the pleasure of the Council.

"ARTICLE VI. TAXES AND BUDGET ORDINANCE.

"Section 6.1. **Commencement of Tax Collection.** From and after the effective date of this act, the citizens and property in the Town of Midway shall be subject to municipal taxes levied for the year beginning July 1, 2006, and for that purpose the Town shall obtain from Davidson County a record of property in the area herein incorporated which was listed for property taxes as of January 1, 2006.

"Section 6.2. **Budget.** The Town may adopt a budget ordinance for fiscal year 2006-2007 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year 2006-2007, ad valorem taxes may be paid at par or face amount within 90 days of adoption of the budget ordinance and thereafter in accordance with the schedule in G.S. 105-360. If the effective date of the incorporation is prior to July 1, 2006, the Town may adopt a budget ordinance for fiscal year 2005-2006 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as practical. No ad valorem taxes may be levied for the 2005-2006 fiscal year.

"Section 6.3. **Ad Valorem Taxes.** The Town Council shall not increase the ad valorem tax rate more than $0.10/$100.00 valuation in each fiscal year without the vote or consent of a majority of the qualified voters of the Town of Midway. The election on the question of increasing the ad valorem tax rate shall be conducted in accordance with G.S. 160A-209."

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

SENATE BILL 1852: Incorporate Midway

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 22, 2006
Introduced by:	Sen. Bingham	**Summary by:**	Judy Collier
Version:	First Edition		Research Assistant

SUMMARY: ***Senate Bill 1852 is a local bill that incorporated the Town of Midway in Davidson County and enacts a charter setting out the powers and duties of the Town. The Joint Legislative Commission on Municipal Incorporations recommended incorporation of the Town in its report on May 15, 2006. The Commission concluded that the proposed Town met the standards required by Article 20 of Chapter 120 of the General Statutes. SB 1852 received a favorable report from Senate Finance Committee on June 8, 2006.***

BILL ANALYSIS: Senate Bill 1852 incorporates the Town of Midway under a mayor-council form of government. There will be five members of the Town Council and a Mayor. Prior to the 2007 municipal election, specifically named persons will serve as interim Mayor and Council Members. At the initial election, the members of the Town Council will be elected to staggered terms. The Mayor will serve a four-year term. Elections will be on a nonpartisan basis.

The maximum ad valorem tax rate will be 10¢ per $100 valuation. The rate may not be increased without the vote or consent of a majority of the qualified voters of the Town.

BACKGROUND: Article 20 of Chapter 120 of the General Statutes creates the Joint Legislative Commission on Municipal Incorporations and sets out the procedures for review of the statutory requirements for incorporation. The Commission, with the help of the Division of Community Assistance of the Department of Commerce, found that the proposed Town of Midway satisfied the following requirements:

- The petition must be signed by 15% of the registered voters in the proposed area, but by not less than 25 registered voters. The petition was signed by 1,632 qualified registered voters of the 3,135 registered voters eligible to sign the petition for incorporation according to the active voter registration records of the Davidson County Board of Elections.
- The petition contained the necessary information, including a plan to provide a reasonable level of services and an ad valorem tax levy of at least 5¢ per $100 valuation. The Town proposed to provide police protection, water distribution, street maintenance, and zoning services.
- The proposed area must have a permanent population of at least 100 and a population density (either permanent or seasonal) of at least 250 persons per square mile. The Town of Midway contained a total population of 4,198 in the 2000 census. The Town is composed of an area of eight (8) square miles, resulting in a density of approximately 525 persons per square mile.
- At least 40% of the proposed area must be developed for residential, commercial, industrial, institutional, or governmental uses, or is dedicated as open space. The Davidson County Planning Department estimates that over 50% of the 5,100 acres within the proposed boundaries of the Town of Midway have been developed.

S1852e1-SMRE

1. Sales Tax Revenue Change

Davidson County distributes sales tax revenues on a per capita basis. This analysis uses the 2004-05 actual sales tax distribution to show how the distribution would have changed had Midway been incorporated at that time.

Current

County	Municipalities	Population	% Population	Sales Tax Distribution
Davidson		151,935	74.9%	24,397,068
	Denton	1,478	0.7%	237,376
	High Point	1,301	0.6%	208,178
	Lexington	20,492	10.1%	3,290,342
	Thomasville	25,562	12.6%	4,104,136
	Wallburg	2,065	1.0%	301,252
	TOTAL	**202,833**		**32,538,353**

With Incorporation

County	Municipalities	Population	% Population	Sales Tax Distribution	Change
Davidson		151,935	74.9%	23,727,632	(669,436)
	Denton	1,478	0.7%	230,819	(6,557)
	High Point	1,301	0.6%	203,177	(5,001)
	Lexington	20,492	10.1%	3,200,228	(90,114)
	Thomasville	25,562	12.6%	3,992,008	(112,128)
	Wallburg	2,065	1.0%	322,490	21,238
	Midway	5,536	2.7%	862,000	862,000
	TOTAL	**208,369**		**32,538,353**	

2. Powell Bill Allocation Change

Annual state street aid (Powell Bill) allocations are made to incorporated municipalities which establish their eligibility and qualify as provided by G.S. 136-41.1 through 136-41.3. The total amount allocated is seventy-five percent (75%) on the basis of relative population and twenty-five percent (25%) on the basis of relative non-State System local street mileage.

For 2004-05, population-based allocations assumed a statewide qualifying municipal population of 4,425,528 and available funds of $102,638,075. This created a per capita distribution rate of $23.20.

Adding the population of the proposed town of Midway to the statewide total creates a new population of 102,643,611 and a new per capita distribution rate of $23.16. The rate change is too small to have a significant impact on the Powell Bill distributions to other Davidson County municipalities.

The Department of Revenue estimates that the Town of Midway would receive $128,500 in Powell Bill funds based on population. The town does not plan to maintain streets locally; therefore, there would be no additional allocation based on street miles.

3. Other Revenues

Municipalities receive an amount equal to approximately 3.09% of the gross receipts resulting from the sale of power and light within the respective municipality. In addition, municipalities receive a portion of the telecommunications sales tax and the piped natural gas tax. Municipalities receive a share of the excise tax on beer and wine if they hold a referendum approving the sale of beer and wine within the corporate limits.

Prepared by:
Rodney Bizzell, Fiscal Research Division
Brian Slivka, Fiscal Research Division
May 12, 2006

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☐ Committee Substitute for

SB 1852 A BILL TO BE ENTITLED AN ACT TO INCORPORATE THE TOWN OF MIDWAY.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S 1

SENATE BILL 1905

Short Title:	Asheville Annexation.	(Local)
Sponsors:	Senators Apodaca and Nesbitt.	
Referred to:	Finance.	

May 25, 2006

A BILL TO BE ENTITLED

AN ACT TO ANNEX CERTAIN DESCRIBED TERRITORY TO THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE.

The General Assembly of North Carolina enacts:

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

BEING ALL OF Lots 1, 3, 4 and 5 shown on a plat entitled "Hankins Properties, LLC" prepared by Ed Holmes & Associates, D. Brian Hughes, PLS, and recorded in Plat Book 100, Page 149 of the Buncombe County, North Carolina Register of Deeds Office, reference to which plat is hereby made for a more particular description of said lots.

SECTION 2. Hankins Properties, LLC, the owner of certain real property described in Section 1, and its successors and assigns, and pursuant to G.S. 160A-58.1(d) and G.S. 153A-344.1, has zoning vested rights in the real property described in Section 1 as follows:

(1) The two site specific development plans approved at the April 13, 2005, Buncombe County Zoning Board of Adjustment Hearing, the vested rights for these two plans will remain in effect until April 13, 2010.

(2) The two site specific development plans approved at the December 14, 2005, Buncombe County Zoning Board of Adjustment Hearing, the vested rights for these two plans will remain in effect until December 14, 2010.

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

SENATE BILL 1905: Asheville Annexation

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 22, 2006
Introduced by:	Sen. Apodaca	**Summary by:**	Judy Collier
Version:	First Edition		Research Assistant

SUMMARY: Senate Bill 1905 would annex certain described property into the City of Asheville and further sets out zoning vested rights of the owner of the described real property. SB 1905 received a favorable report from Senate Finance Committee on June 8, 2006.

CURRENT LAW: North Carolina law sets forth four (4) basic ways in which a town or city may annex an area.

1. **Voluntary Annexation.** The owners of all real property in the area desiring to be annexed sign a petition requesting annexation. Part 1 of Article 4 of Chapter 160A.
2. **Legislative Act.** The General Assembly has the authority to extend the boundaries of any town or city. This method is most helpful to a town or city trying to annex an area that they could not otherwise.
3. **Satellite Annexation.** This method allows a town or city to annex certain non-contiguous areas meeting the statutory standards into the town or city limits. Part 4 of Article 4 of Chapter 160A.
4. **Non-voluntary Annexation.** The town or city brings into the corporate limits an area that has not voluntarily agreed to be annexed. Parts 2 and 3 of Article 4 of Chapter 160A.

BILL ANALYSIS: Senate Bill 1905 would annex certain described property into the corporate limits of the City of Asheville and further sets out zoning vested rights of the owner of the described real property.

BACKGROUND: In the 2005 Session, Senate Bill 249, Asheville Satellite Annexations, a satellite annexation for a shopping center was passed and chaptered as Session Law 2005-85. Subsequently, it was discovered that a parcel of land that includes the Carrabba's location in the shopping center was somehow left out of that bill. The current bill, Senate Bill 1905, would effectively annex the property identified as the missing piece in the original bill, Senate Bill 249.

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

S1905e1-SMRE

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☐ Committee Substitute for

SB 1905 A BILL TO BE ENTITLED AN ACT TO ANNEX CERTAIN DESCRIBED TERRITORY TO THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

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

North Carolina General Assembly

House Committee on Finance

Minutes

~

June 27, 2006

The House Committee on Finance met on Tuesday, June 27, 2006 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Alexander, Gibson, Howard, Luebke, McComas, and Wainwright; Vice-Chairs Daughtridge, Hill, Ross, Weiss, and Womble; and Representatives B. Allen, Blackwood, Bordsen, Capps, Carney, England, Faison, Fisher, Folwell, Glazier, Goforth, Hackney, Harrell, Holliman, Insko, Jones, Lewis, Lucas, McGee, Rayfield, Underhill, Vinson, Walend, and Wiley. Also present were Sergeant-at-Arms Will Heath, Fred Hines, Marvin Lee, and Dusty Rhodes. Staff persons present included Cindy Avrette, Rodney Bizzell, David Crotts, Brenna Erford, Dan Ettefagh, Linda Millsaps, and Martha Walston. The Agenda and Visitor Registration Sheets are attached and incorporated into these minutes as **attachments 1 and 2.**

Chairwoman Alexander called the meeting to order at 8:32 am and recognized the ten (10) pages present: (1) Suzanne Jordan of Wake County, sponsored by Representative Crawford; (2) Amanda Fox of Buncombe County, sponsored by Representative Sherrill; (3) Katie Womble of Wake County, sponsored by Speaker Black; (4) Hannah Barnwell of Guilford County, sponsored by Representative Jeffus; (5) Robert Guillot of Hoke County, sponsored by Representative Yongue; (6) Eric Schneider of Mecklenburg County, sponsored by Speaker Black; (7) Trent Ball of Craven County, sponsored by Representative Underhill; (8) Sarah Barnwell of Guilford County, sponsored by Representative Jeffus; (9) Ryan Griffin of Carteret County, sponsored by Representative Preston; and (10) Andrew Kenny of Cabarrus County, sponsored by Representative Barnhart.

The first bill under consideration by the Committee was **HB 2339 – LINCOLN COUNTY TAX CERTIFICATION** (see **attachment 7**). Chairwoman Alexander recognized Representative Kiser to explain the bill. Representative Kiser stated that this bill adds Lincoln County to the list of counties that have the authority to require tax certification of a deed prior to recording. The bill would also allow Lincoln County to pass an ordinance prohibiting the issuance of a building permit to a person who owes delinquent property taxes on that property. Representative Kiser also reported that this bill had received a favorable report from the House Local Government II Committee. Following the explanation, Representative Howard was recognized and asked if Davie County was already included in this statute. Cindy Avrette of Research reported that Davie County was not currently included in the statutes. Representative Howard then asked staff to prepare an amendment that would add Davie County to the bill. Chairwoman Alexander then displaced the bill in order for an amendment to be prepared.

The Committee then considered **HB 2551 – EXEMPTION FOR BALER TWINE FROM SALES TAX** (see **attachment 3**). Chairwoman Alexander first recognized Representative Hill who explained that the bill exempts baler twine sold to a farmer from the sales and use tax. Representative Lewis was recognized and stated that this exemption conforms to other sales tax exemptions for farm equipment. Representative Lewis also showed a spool of baler twine to the Committee for educational purposes. Chairwoman Alexander then recognized Representative Glazier who moved that House Bill 2551 be given a favorable report. Seeing no further discussion, Chairwoman Alexander called the motion to a vote and it carried by consent.

The next bill considered by the Committee was **HB 2638 – DOBSON SATELLITE ANNEXATIONS** (see **attachment 4**). Chairwoman Alexander recognized Representative Gibson, on behalf of the bill sponsor Representative Harrell, to explain the bill. Representative Gibson stated that this bill exempts the Town of Dobson from the ten percent (10%) cap on satellite annexations. Following the explanation, Representative Carney was recognized and moved that House Bill 2638 be given a favorable report by the Committee. As there was no further debate, Chairwoman Alexander called the motion to a vote and it carried without objection.

The following bill under the Committee's consideration was **SB 1451 – AMEND DELINQUENT PROPERTY TAX COLLECTION** (see **attachment 5**). Chairman Alexander first recognized Representative Carney who moved for the adoption of the proposed committee substitute (PCS) for consideration by the Committee. The motion carried. Senator Hartsell was then recognized and reported that this bill was approved unanimously by the Senate. However, the new PCS adds a provision that prohibits a county from collecting property tax on unsold manufactured housing inventory used for display purposes. Representative Glazier was recognized and expressed his support for the bill, noting that the bill addressed several outstanding constitutional issues. Chairwoman Alexander then recognized Representative Blackwood who moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. Since there was no further discussion, Chairwoman Alexander called the motion to a vote and it carried by consent.

The committee then considered **SB 1372 – PROPERTY TAX DUE DATE CHANGE** (see **attachment 6**). Chairwoman Alexander first recognized Representative Glazier who explained that the bill authorizes local taxing units to allow property taxes for certain newly annexed property to be collected over a three-year period. He further explained that the bill helps to address a problem in Fayetteville that arose between the city and the Gates Four Community. Representative Glazier reported that the bill has the support of all members of the local delegation. Chairwoman Alexander then recognized Representative Luebke who moved that Senate Bill 1372 be given a favorable report by the Committee. As there was no further debate, Chairwoman Alexander called the motion to a vote and it carried without objection.

Chairwoman Alexander then replaced **HB 2339 – LINCOLN COUNTY TAX CERTIFICATION** (see **attachment 7**) before the Committee. She recognized Representative Howard who sent forth an amendment (see **attachment 8**) to add Davie and Caswell counties to the bill and moved for the amendment's adoption. Seeing no further discussion on the amendment, Chairwoman Alexander called the motion to a vote and the amendment was adopted. Representative Holliman was then recognized and moved for a favorable report to the proposed committee substitute, incorporating the Howard amendment. As there was no further debate, Chairwoman Alexander called the motion to a vote and it carried by consent.

The final bill considered by the Committee was **HB 2744 – ECONOMIC DEVELOPMENT PROGRAM MODIFICATIONS** (see **attachment 9**). Chairman Alexander

then recognized Representative Howard who moved for the adoption of the proposed committee substitute (PCS) for consideration by the Committee. The motion carried. Representative Daughtridge then explained the bill. He stated that this bill makes changes to the Job Development Investment Grant Program (JDIG). Under the PCS, the cap on the total amount of annual liability entered into for the next fiscal year has been increased from $15 million to $30 million in order for a larger number of negotiations to proceed in future years. The PCS also extends the sunset on the JDIG program until 2009. Representative Luebke was then recognized and asked about the fiscal impact of the bill. In response, David Crotts of Fiscal Research reported that this bill is mostly an extension of the previous JDIG legislation except for the possible increase in cost resulting from the cap increase. Cindy Avrette of Research was then recognized and gave a further explanation of the bill regarding changes made including additional language regarding how the tier structure is applied once contracts are negotiated. She noted that this change had been requested by the House Finance Committee Chairs.

Chairwoman Alexander then recognized Representative Womble who asked how the PCS would help urban areas. Representative Gibson responded saying that this bill in the past has added more jobs to urban areas, rather than rural areas. He continued saying that the Bill Lee Act has been more user friendly for rural areas and the JDIG legislation has been more helpful to urban areas. Representative Ross was then recognized and asked if the availability for the increased cap has been included in the upcoming conference report on the budget. Representative Gibson then stated that funds have been included in the budget bill. Representative Ross then asked a second question about the clawback provisions on page 10 of the PCS. Cindy Avrette of Research was recognized and explained that the Economic Investment Committee is given greater options and flexibility in handling a business that fails to comply with any terms of a JDIG agreement. Representative Luebke was recognized and informed members that this bill adds further exemptions from the sales tax for construction projects. He then cautioned members against going down the path where the sales tax burden is placed solely on consumers and businesses that do not qualify for the economic incentive.

Chairwoman Alexander then recognized Representative Weiss who asked staff to explain the fiscal implications of the increased cap. Mr. Crotts of Fiscal Research explained that the increased cap could potentially have a $180 million impact over 12 years. He then assured the Committee that a fiscal note would be provided by the time the bill was considered by the Appropriations Committee. Representative Gibson was then recognized and claimed that the Bill Lee and JDIG programs in the past have led the way in the country for job creation. Representative Weiss then asked why the wage standard was removed. Chairwoman Alexander recognized Don Holbert from Department of Commerce to answer Representative Weiss's question. He stated that the wage standards were removed to allow this legislation to more directly impact pockets of poverty in urban areas across the state. Representative Luebke was then recognized and stated that this is a costly program for revenue availability and the Committee members should take a serious look at the fiscal implications of this PCS. To provide additional comments on the PCS, Chairwoman Alexander then recognized Secretary Fain of the Department of Commerce who gave a history of the JDIG program. He reported that the program began three years ago and has created almost 15,000 jobs over the lifetime of the program. The grants have induced over $2 billion in investment by companies into capital and infrastructure. Chairwoman Alexander then recognized Mayor Allen Joines of Winston-Salem who expressed his support for the Bill Lee Act and this piece of legislation. Representative Howard then offered comments on the JDIG study that is supposed to be presented to the Senate and House Finance Committee Chairs. She reported that the chairs have not received past studies in a timely manner and urged the Department of Commerce to submit the report on time in the future. Representative Goforth then moved for a favorable report to the PCS with a

recommendation that the Committee Substitute be re-referred to the Committee on Appropriations and an unfavorable report as to the original bill.

Having no further business before the Committee, Chairwoman Alexander then adjourned the meeting at 9:40 am.

Respectfully submitted,

Representative Martha Alexander
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:

1. Agenda
2. Visitor Registration Sheets
3. House Bill 2551 (and related materials)
4. House Bill 2638 (and related materials)
5. Senate Bill 1451 (and related materials)
6. Senate Bill 1372 (and related materials)
7. House Bill 2339 (and related materials)
8. Howard Amendment on House Bill 2339 (and related materials) - **ADOPTED**
9. House Bill 2744 (and related materials)

North Carolina General Assembly

House Committee on Finance

Minutes

~

June 27, 2006

The House Committee on Finance met on Tuesday, June 27, 2006 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Alexander, Gibson, Howard, Luebke, McComas, and Wainwright; Vice-Chairs Daughtridge, Hill, Ross, Weiss, and Womble; and Representatives B. Allen, Blackwood, Bordsen, Capps, Carney, England, Faison, Fisher, Folwell, Glazier, Goforth, Hackney, Harrell, Holliman, Insko, Jones, Lewis, Lucas, McGee, Rayfield, Underhill, Vinson, Walend, and Wiley. Also present were Sergeant-at-Arms Will Heath, Fred Hines, Marvin Lee, and Dusty Rhodes. Staff persons present included Cindy Avrette, Rodney Bizzell, David Crotts, Brenna Erford, Dan Ettefagh, Linda Millsaps, and Martha Walston. The Agenda and Visitor Registration Sheets are attached and incorporated into these minutes as **attachments 1 and 2.**

Chairwoman Alexander called the meeting to order at 8:32 am and recognized the ten (10) pages present: (1) Suzanne Jordan of Wake County, sponsored by Representative Crawford; (2) Amanda Fox of Buncombe County, sponsored by Representative Sherrill; (3) Katie Womble of Wake County, sponsored by Speaker Black; (4) Hannah Barnwell of Guilford County, sponsored by Representative Jeffus; (5) Robert Guillot of Hoke County, sponsored by Representative Yongue; (6) Eric Schneider of Mecklenburg County, sponsored by Speaker Black; (7) Trent Ball of Craven County, sponsored by Representative Underhill; (8) Sarah Barnwell of Guilford County, sponsored by Representative Jeffus; (9) Ryan Griffin of Carteret County, sponsored by Representative Preston; and (10) Andrew Kenny of Cabarrus County, sponsored by Representative Barnhart.

The first bill under consideration by the Committee was **HB 2339 – LINCOLN COUNTY TAX CERTIFICATION** (see **attachment 7**). Chairwoman Alexander recognized Representative Kiser to explain the bill. Representative Kiser stated that this bill adds Lincoln County to the list of counties that have the authority to require tax certification of a deed prior to recording. The bill would also allow Lincoln County to pass an ordinance prohibiting the issuance of a building permit to a person who owes delinquent property taxes on that property. Representative Kiser also reported that this bill had received a favorable report from the House Local Government II Committee. Following the explanation, Representative Howard was recognized and asked if Davie County was already included in this statute. Cindy Avrette of Research reported that Davie County was not currently included in the statutes. Representative Howard then asked staff to prepare an amendment that would add Davie County to the bill. Chairwoman Alexander then displaced the bill in order for an amendment to be prepared.

The Committee then considered **HB 2551 – EXEMPTION FOR BALER TWINE FROM SALES TAX** (see **attachment 3**). Chairwoman Alexander first recognized Representative Hill who explained that the bill exempts baler twine sold to a farmer from the sales and use tax. Representative Lewis was recognized and stated that this exemption conforms to other sales tax exemptions for farm equipment. Representative Lewis also showed a spool of baler twine to the Committee for educational purposes. Chairwoman Alexander then recognized Representative Glazier who moved that House Bill 2551 be given a favorable report. Seeing no further discussion, Chairwoman Alexander called the motion to a vote and it carried by consent.

The next bill considered by the Committee was **HB 2638 – DOBSON SATELLITE ANNEXATIONS** (see **attachment 4**). Chairwoman Alexander recognized Representative Gibson, on behalf of the bill sponsor Representative Harrell, to explain the bill. Representative Gibson stated that this bill exempts the Town of Dobson from the ten percent (10%) cap on satellite annexations. Following the explanation, Representative Carney was recognized and moved that House Bill 2638 be given a favorable report by the Committee. As there was no further debate, Chairwoman Alexander called the motion to a vote and it carried without objection.

The following bill under the Committee's consideration was **SB 1451 – AMEND DELINQUENT PROPERTY TAX COLLECTION** (see **attachment 5**). Chairman Alexander first recognized Representative Carney who moved for the adoption of the proposed committee substitute (PCS) for consideration by the Committee. The motion carried. Senator Hartsell was then recognized and reported that this bill was approved unanimously by the Senate. However, the new PCS adds a provision that prohibits a county from collecting property tax on unsold manufactured housing inventory used for display purposes. Representative Glazier was recognized and expressed his support for the bill, noting that the bill addressed several outstanding constitutional issues. Chairwoman Alexander then recognized Representative Blackwood who moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. Since there was no further discussion, Chairwoman Alexander called the motion to a vote and it carried by consent.

The committee then considered **SB 1372 – PROPERTY TAX DUE DATE CHANGE** (see **attachment 6**). Chairwoman Alexander first recognized Representative Glazier who explained that the bill authorizes local taxing units to allow property taxes for certain newly annexed property to be collected over a three-year period. He further explained that the bill helps to address a problem in Fayetteville that arose between the city and the Gates Four Community. Representative Glazier reported that the bill has the support of all members of the local delegation. Chairwoman Alexander then recognized Representative Luebke who moved that Senate Bill 1372 be given a favorable report by the Committee. As there was no further debate, Chairwoman Alexander called the motion to a vote and it carried without objection.

Chairwoman Alexander then replaced **HB 2339 – LINCOLN COUNTY TAX CERTIFICATION** (see **attachment 7**) before the Committee. She recognized Representative Howard who sent forth an amendment (see **attachment 8**) to add Davie and Caswell counties to the bill and moved for the amendment's adoption. Seeing no further discussion on the amendment, Chairwoman Alexander called the motion to a vote and the amendment was adopted. Representative Holliman was then recognized and moved for a favorable report to the proposed committee substitute, incorporating the Howard amendment. As there was no further debate, Chairwoman Alexander called the motion to a vote and it carried by consent.

The final bill considered by the Committee was **HB 2744 – ECONOMIC DEVELOPMENT PROGRAM MODIFICATIONS** (see **attachment 9**). Chairman Alexander

then recognized Representative Howard who moved for the adoption of the proposed committee substitute (PCS) for consideration by the Committee. The motion carried. Representative Daughtridge then explained the bill. He stated that this bill makes changes to the Job Development Investment Grant Program (JDIG). Under the PCS, the cap on the total amount of annual liability entered into for the next fiscal year has been increased from $15 million to $30 million in order for a larger number of negotiations to proceed in future years. The PCS also extends the sunset on the JDIG program until 2009. Representative Luebke was then recognized and asked about the fiscal impact of the bill. In response, David Crotts of Fiscal Research reported that this bill is mostly an extension of the previous JDIG legislation except for the possible increase in cost resulting from the cap increase. Cindy Avrette of Research was then recognized and gave a further explanation of the bill regarding changes made including additional language regarding how the tier structure is applied once contracts are negotiated. She noted that this change had been requested by the House Finance Committee Chairs.

Chairwoman Alexander then recognized Representative Womble who asked how the PCS would help urban areas. Representative Gibson responded saying that this bill in the past has added more jobs to urban areas, rather than rural areas. He continued saying that the Bill Lee Act has been more user friendly for rural areas and the JDIG legislation has been more helpful to urban areas. Representative Ross was then recognized and asked if the availability for the increased cap has been included in the upcoming conference report on the budget. Representative Gibson then stated that funds have been included in the budget bill. Representative Ross then asked a second question about the clawback provisions on page 10 of the PCS. Cindy Avrette of Research was recognized and explained that the Economic Investment Committee is given greater options and flexibility in handling a business that fails to comply with any terms of a JDIG agreement. Representative Luebke was recognized and informed members that this bill adds further exemptions from the sales tax for construction projects. He then cautioned members against going down the path where the sales tax burden is placed solely on consumers and businesses that do not qualify for the economic incentive.

Chairwoman Alexander then recognized Representative Weiss who asked staff to explain the fiscal implications of the increased cap. Mr. Crotts of Fiscal Research explained that the increased cap could potentially have a $180 million impact over 12 years. He then assured the Committee that a fiscal note would be provided by the time the bill was considered by the Appropriations Committee. Representative Gibson was then recognized and claimed that the Bill Lee and JDIG programs in the past have led the way in the country for job creation. Representative Weiss then asked why the wage standard was removed. Chairwoman Alexander recognized Don Holbert from Department of Commerce to answer Representative Weiss's question. He stated that the wage standards were removed to allow this legislation to more directly impact pockets of poverty in urban areas across the state. Representative Luebke was then recognized and stated that this is a costly program for revenue availability and the Committee members should take a serious look at the fiscal implications of this PCS. To provide additional comments on the PCS, Chairwoman Alexander then recognized Secretary Fain of the Department of Commerce who gave a history of the JDIG program. He reported that the program began three years ago and has created almost 15,000 jobs over the lifetime of the program. The grants have induced over $2 billion in investment by companies into capital and infrastructure. Chairwoman Alexander then recognized Mayor Allen Joines of Winston-Salem who expressed his support for the Bill Lee Act and this piece of legislation. Representative Howard then offered comments on the JDIG study that is supposed to be presented to the Senate and House Finance Committee Chairs. She reported that the chairs have not received past studies in a timely manner and urged the Department of Commerce to submit the report on time in the future. Representative Goforth then moved for a favorable report to the PCS with a

recommendation that the Committee Substitute be re-referred to the Committee on Appropriations and an unfavorable report as to the original bill.

Having no further business before the Committee, Chairwoman Alexander then adjourned the meeting at 9:40 am.

Respectfully submitted,

Representative Martha Alexander
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:

1. Agenda
2. Visitor Registration Sheets
3. House Bill 2551 (and related materials)
4. House Bill 2638 (and related materials)
5. Senate Bill 1451 (and related materials)
6. Senate Bill 1372 (and related materials)
7. House Bill 2339 (and related materials)
8. Howard Amendment on House Bill 2339 (and related materials) - **ADOPTED**
9. House Bill 2744 (and related materials)

ATTACHMENT 1

AGENDA

House Finance Committee

Tuesday, June 27, 2006
8:30 a.m.
Room 544 LOB
Chaired by: Rep. Alexander

Co-Chairs

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

Call to Order

Introduction of Pages

Bills:

HB 2339	**LINCOLN COUNTY TAX CERTIFICATION**	*Rep. Kiser*
HB 2551	**EXEMPTION FOR BALER TWINE FROM SALES TAX**	*Rep. Hill*
HB 2638	**DOBSON SATELLITE ANNEXATIONS**	*Rep. Harrell*
HB 2744	**ECONOMIC DEVELOPMENT PROGRAM MODIFICATIONS**	*Reps. Owens & Daughtridge*
SB 1372	**PROPERTY TAX DUE DATE CHANGE**	*Sen. Rand*
SB 1451	**AMEND DELINQUENT PROPERTY TAX COLLECTION**	*Sen. Hartsell*

Adjournment

ATTACHMENT 2

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 27, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Roger Bone	Bone & Assoc
Stan Wilson	NCMA
FRANK W. FOLGER	HELMS MULLISS WICKER
Andy Sabol	NCOOR
Hayley Haralson	N.C.B.A.
Kelly Calabria	Capstrat
Erin Kinney	NCCN
Wendy Kelly	HMW
Rick Zechini	NCAR
DREW MORITZ	GRCC
Molly Ryan	NCSBA
ANN LOVE	DUAS
Mary Blanchard	Pappas Consulting
PAUL MAIER	NCAFC

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 27, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dana Simpson	Smith Anderson
Lydia Varn	Squire of Jim Blackburn
Daniel Cordaro	NCACC
ANTHONY ALLEN	NCACC
Lisa Martin	NC HBA
Angie Harris	Maupa Taylor
Andy Romanet	NCLM
Joanne Stevens	NCNA ~ Joanne Stevens
Veronica Carrington	Rep. William Wainwright Intern
SUSANNE STEEN	NCRA
DON HOBART	NC DOC
BILL SCOGGIN	KCCH
PAUL MEYER	NCACC

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 27, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lee Hedgepeth	KCCH
John McKay	Gov Affairs
Frank Gray	NCMHE
Steve Woodson	NCFB
[illegible]	[illegible]
Idrianna Reese	DOT
PERRI MORGAN	NC100
[illegible]	NCTA
Scott Perry	DSTA

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 27, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Cam Cave	BPMHL

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 27, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jim FAIN	DOC
Allen Jones	City of Winston Salem
Cathy Wrigglesworth	GAS OFFICE
Amanda Wood	NC Sierra Club
Emmaline Simpson	Rep. Daughtridge
Bill Rowe	NC Justice Center
Leah Friedman	News + Observer
David Gardner	NC Bar Assoc
R. Paul Wilms	NCHBA
J Stewart	NCC
A James Dillard	NCJC
Tony Adams	NCAAA

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 27, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Doug Byrd	Commerce
Paige O'Hale	Gov's Office
Jeff Wolfe	Daily Bulletin
Mark Trawick	Donald Beaver Intern
Sam McEwen	DOR
Amy Simes	DENR
Jennifer Willis	Wilkes County
Emmett Curl	WATE COUNTY
Abby C. Emanuelson	NMSS
	Beaver Intern
Michael Bass	NC DOR

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — June 27, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
David Baker	NC DOR
Adam Brueggemann	OSBM
Jim Lora	OSBM
Chris Harder	OSBM
Sharon Miller	CUCA
Kathy Howlin	Progress Energy
John Peterson	NCEDA
Pete Rodda	Forsyth Co Tax Assessor/Collector
CPM	NCATL
Sherrod Davis	ElectriCities
Ed Fulghum	BP

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

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

DAY & DATE: **Tuesday, June 27, 2006**

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

LOCATION: **Room 544, LOB**

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

HB 2339 – LINCOLN COUNTY TAX CERTIFICATION – Rep. Kiser

HB 2551 – EXEMPTION FOR BALER TWINE FROM SALES TAX – Rep. Hill

HB 2638 – DOBSON SATELLITE ANNEXATIONS – Rep. Harrell

HB 2744 – ECONOMIC DEVELOPMENT PROGRAM MODIFICATIONS – Reps. Owens & Daughtridge

SB 1372 – PROPERTY TAX DUE DATE CHANGE – Sen. Rand

SB 1451 – AMEND DELINQUENT PROPERTY TAX COLLECTION – Sen. Hartsell

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

I hereby certify this notice was filed by the committee clerk at the following offices at **3:20pm** on **June 22, 2006**:

X Principal Clerk
X Reading Clerk - House Chamber

Jason A. Cannon (Committee Clerk)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 2551

Short Title:	Exemption for Baler Twine from Sales Tax.	(Public)
Sponsors:	Representatives Hill; Faison and Pate.	
Referred to:	Finance.	

May 25, 2006

A BILL TO BE ENTITLED

AN ACT TO EXEMPT BALER TWINE FROM THE SALES AND USE TAX.

The General Assembly of North Carolina enacts:

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

"(1) Any of the following items sold to a farmer for use by the farmer in the planting, cultivating, harvesting, or curing of farm crops or in the production of dairy products, eggs, or animals. A "farmer" includes a dairy operator, a poultry farmer, an egg producer, a livestock farmer, a farmer of crops, and a farmer of an aquatic species, as defined in G.S. 106-758.

a. Commercial fertilizer, lime, land plaster, plastic mulch, plant bed covers, potting soil, baler twine, and seeds.

b. Farm machinery, attachment and repair parts for farm machinery, and lubricants applied to farm machinery. The term "machinery" includes implements that have moving parts or are operated or drawn by an animal. The term does not include implements operated wholly by hand or motor vehicles required to be registered under Chapter 20 of the General Statutes.

c. A horse or mule.

d. Fuel other than electricity."

SECTION 2. This act becomes effective October 1, 2006, and applies to sales made on or after that date.

HOUSE BILL 2551:
Exemption for Baler Twine from Sales Tax

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 23, 2006
Introduced by:	Rep. Hill	**Summary by:**	Martha Walston
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 2551 would exempt from sales and use tax baler twine sold to a farmer.

CURRENT LAW: The following items are exempt from sales and use tax if sold to a farmer:

- Commercial fertilizer, lime, land plastic mulch, plant bed covers, potting soil, and seeds.
- Farm machinery, attachment and repair parts for farm machinery, and lubricants applied to farm machinery
- A horse or mule
- Fuel other than electricity.[1]

The definition of "farmer" includes a dairy operator, poultry farmer, egg producer, livestock farmer, farmer of crops, and a farmer of aquatic species.[2]

A farmer must apply for an exemption number from the Department of Revenue in order to qualify for the sales and use tax exemption.

BILL ANALYSIS: House Bill 2551 would add baler twine sold to farmers to the list of items exempt from sales and use tax. For example, this would allow a sales tax exemption on baler twine used on hay that farmers feed to their livestock.

EFFECTIVE DATE: The act becomes effective October 1, 2006, and applies to sales made on or after that date.

H2551e1-SMLA

[1] Prior to January 1, 2006, the sale of horses or mules and sale of fuel other than electricity to farmers were subject to a 1% tax. The sale of farm machinery, attachments and repair parts for farm machinery, and lubricants applied to farm machinery were subject to a 1% tax, with an $80 cap per item. The sale of potting soil was subject to the general State and local sales tax rate.

[2] G.S. 106-758 defines "aquatic species" as any species of finfish, mollusk, crustacean, or other aquatic invertebrate, amphibian, reptile, or aquatic plant, and including, but not limited to, "fish" and "fishes". "Fish" and "fishes" are defined as marine mammals; all shellfish; all crustaceans; and all other fishes.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 2551 (First Edition)

SHORT TITLE: Exemption for Baler Twine from Sales Tax.

SPONSOR(S): Representative Hill

FISCAL IMPACT

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

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES:	*Small revenue loss – see Assumptions & Methodology*				

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

EFFECTIVE DATE: October 1, 2006

BILL SUMMARY: House Bill 2551 would add baler twine sold to farmers to the list of items exempt from sales and use tax. For example, this would allow a sales tax exemption on baler twine used on hay that farmers feed to their livestock.

ASSUMPTIONS AND METHODOLOGY: The following items are exempt from sales and use tax if sold to a farmer:

- Commercial fertilizer, lime, land plastic mulch, plant bed covers, potting soil, and seeds.
- Farm machinery, attachment and repair parts for farm machinery, and lubricants applied to farm machinery
- A horse or mule
- Fuel other than electricity.[i]

Baler twine is currently taxed at the general combined sales tax rate of 7%. The addition of baler twine to the list of exempt items for farmers is likely to result in a very small annual revenue loss. However, the Department of Revenue does not have any data on which to base an estimate of the actual impact of this change.

SOURCES OF DATA: Department of Revenue

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Brenna Erford

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: June 26, 2006

Signed Copy Located in the NCGA Principal Clerk's Offices

---

[i] Prior to January 1, 2006, the sale of horses or mules and sale of fuel other than electricity to farmers were subject to a 1% tax. The sale of farm machinery, attachments and repair parts for farm machinery, and lubricants applied to farm machinery were subject to a 1% tax, with an $80 cap per item. The sale of potting soil was subject to the general State and local sales tax rate.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☐ Committee Substitute for

HB 2551 A BILL TO BE ENTITLED AN ACT TO EXEMPT BALER TWINE FROM THE SALES AND USE TAX.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 2638

Short Title:	Dobson Satellite Annexations.	(Local)
Sponsors:	Representative Harrell.	
Referred to:	Local Government II, if favorable, Finance.	

May 25, 2006

A BILL TO BE ENTITLED

AN ACT REMOVING THE CAP ON SATELLITE ANNEXATIONS BY THE TOWN OF DOBSON.

The General Assembly of North Carolina enacts:

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

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

...

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

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

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

HOUSE BILL 2638:
Dobson Satellite Annexations

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 27, 2006
Introduced by:	Rep. Harrell	**Summary by:**	Judy Collier
Version:	First Edition		Research Assistant

SUMMARY: House Bill 2638 is a local bill that would exempt the Town of Dobson from the requirement for satellite annexation that the area to be annexed, when added to the area within all other satellite corporate limits, may not exceed 10% of the area within the primary corporate limits of the annexing city. The bill received a favorable report from House Local Government II Committee on June 21, 2006.

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

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

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

BILL ANALYSIS: House Bill 2638 would permanently exempt the Town of Dobson from the 5th requirement, which requires that the proposed area for satellite annexation, when added to the area within all other satellite corporate limits, not exceed 10% of the area within the primary corporate limits of the annexing city.

The purpose of the 5th requirement is designed to further the legislative goal of not allowing annexations to undermine the notion of a city as a single, contiguous, and compact entity. In practice, however, the standard has proved to be a problem for many smaller cities, because one large development by itself may easily exceed the 10% limit. Because of this, the General Assembly has exempted a significant number of cities and towns (at least 63) from this 10% rule by local act.

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

H2638e1-SMRE

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

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☐ Committee Substitute for

HB 2638 A BILL TO BE ENTITLED AN ACT REMOVING THE CAP ON SATELLITE ANNEXATIONS BY THE TOWN OF DOBSON.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1451
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1451-CSLA-43 [v.5]

6/26/2006 7:39:12 PM

Short Title: Delinquent Property Tax/Inventory/Study. (Public)

Sponsors:

Referred to:

May 17, 2006

A BILL TO BE ENTITLED

AN ACT TO ENFORCE COLLECTION OF PROPERTY TAXES ON REAL PROPERTY AGAINST THE RECORD OWNER AS OF THE DATE THE TAXES BECOME DELINQUENT, TO CODIFY THE PRORATION OF TAXES ON REAL PROPERTY, TO REQUIRE A TAX COLLECTOR TO TAKE REASONABLE ADDITIONAL STEPS TO NOTIFY A PROPERTY OWNER OF A TAX SALE UNLESS THE TAX COLLECTOR HAS AFFIRMATIVE KNOWLEDGE THAT THE MAILED NOTICE REACHED THE RECIPIENT, TO AMEND THE DEFINITION OF INVENTORIES TO INCLUDE DISPLAY MODULAR HOMES, AND TO STUDY THE VALUATION OF PROPERTY AT ITS PRESENT-USE VALUE FOR PROPERTY TAX PURPOSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-273(17) reads as rewritten:

"**§ 105-273. Definitions.**

When used in this Subchapter (unless the context requires a different meaning):

...

(17) "Taxpayer" means any person whose property is subject to ad valorem property taxation by any county or municipality and any person who, under the terms of this Subchapter, has a duty to list property for taxation. For purposes of collecting delinquent ad valorem taxes assessed on real property under G.S. 105-366 through G.S. 105-375, "taxpayer" means the owner of record on the date the taxes become delinquent and any subsequent owner of record of the real property if conveyed after that date."

SECTION 2. G.S. 105-369 reads as rewritten:

"**§ 105-369. Advertisement of tax liens on real property for failure to pay taxes.**

(a) Report of Unpaid Taxes That Are Liens on Real Property. – In February of each year, the tax collector must report to the governing body the total amount of unpaid

taxes for the current fiscal year that are liens on real property. A county tax collector's report is due the first Monday in February, and a municipal tax collector's report is due the second Monday in February. Upon receipt of the report, the governing body must order the tax collector to advertise the tax liens. For purposes of this section, district taxes collected by county tax collectors shall be regarded as county taxes and district taxes collected by municipal tax collectors shall be regarded as municipal taxes.

(b) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1013.

(b1) Notice to Owner. – After the governing body orders the tax collector to advertise the tax liens, the tax collector must send a notice to the ~~listing owner and to the~~ record owner of each affected parcel of property, as determined as of ~~December 31 of the fiscal year for which the taxes are due.~~the date the taxes became delinquent. The notice must be sent to ~~each~~ the owner's last known address by first-class mail at least 30 days before the date the advertisement is to be published. The notice must state the principal amount of unpaid taxes that are a lien on the parcel to be advertised and inform the owner that the ~~names~~ name of ~~the listing owner and~~ the record owner as of the date the taxes became delinquent will appear in a newspaper advertisement of delinquent taxes if the taxes are not paid before the publication date. Failure to mail the notice required by this section to the correct ~~listing owner or~~ record owner does not affect the validity of the tax lien or of any foreclosure action.

(c) Time and Contents of Advertisement. – A tax collector's failure to comply with this subsection does not affect the validity of the taxes or tax liens. The county tax collector shall advertise county tax liens by posting a notice of the liens at the county courthouse and by publishing each lien at least one time in one or more newspapers having general circulation in the taxing unit. The municipal tax collector shall advertise municipal tax liens by posting a notice of the liens at the city or town hall and by publishing each lien at least one time in one or more newspapers having general circulation in the taxing unit. Advertisements of tax liens shall be made during the period March 1 through June 30. The costs of newspaper advertising shall be paid by the taxing unit. If the taxes of two or more taxing units are collected by the same tax collector, the tax liens of each unit shall be advertised separately unless, under the provisions of a special act or contractual agreement between the taxing units, joint advertisement is permitted.

The posted notice and newspaper advertisement shall set forth the following information:

~~(1) In the case of property that the listing owner has not transferred after January 1 preceding the fiscal year for which the tax liens are advertised, the name of each person to whom is listed real property on which the taxing unit has a lien for unpaid taxes, in alphabetical order.~~

(1a) ~~In the case of property that the listing owner has transferred after January 1 preceding the fiscal year for which the tax liens are advertised, the name of the record owner as of December 31 of each parcel on which the taxing unit has a lien for unpaid taxes, in alphabetical order, followed by a notation that the property was transferred to the record owner and a notation of the name of the~~

~~listing owner.~~The name of the record owner as of the date the taxes became delinquent for each parcel on which the taxing unit has a lien for unpaid taxes, in alphabetical order.

(1b) After the information required by subdivision ~~(1) or~~ (1a) of this subsection for each parcel, a brief description of each parcel of land to which a lien has attached and a statement of the principal amount of the taxes constituting a lien against the parcel.

(2) A statement that the amounts advertised will be increased by interest and costs and that the omission of interest and costs from the amounts advertised will not constitute waiver of the taxing unit's claim for those items.

(3) In the event the list of tax liens has been divided for purposes of advertisement in more than one newspaper, a statement of the names of all newspapers in which advertisements will appear and the dates on which they will be published.

(4) A statement that the taxing unit may foreclose the tax liens and sell the real property subject to the liens in satisfaction of its claim for taxes.

(d) Costs. – Each parcel of real property advertised pursuant to this section shall be assessed an advertising fee to cover the actual cost of the advertisement. Actual advertising costs per parcel shall be determined by the tax collector on any reasonable basis. Advertising costs assessed pursuant to this subsection are taxes.

(e) Payments during Advertising Period. – At any time during the advertisement period, any parcel may be withdrawn from the list by payment of the taxes plus interest that has accrued to the time of payment and a proportionate part of the advertising fee to be determined by the tax collector. Thereafter, the tax collector shall delete that parcel from any subsequent advertisement, but the tax collector is not liable for failure to make the deletion.

(f) Listing and Advertising in Wrong Name. – No tax lien is void because the real property to which the lien attached was listed or advertised in the name of a person other than the person in whose name the property should have been listed for taxation if the property was in other respects correctly described on the abstract or in the advertisement.

(g) Wrongful Advertisement. – Any tax collector or deputy tax collector who willfully advertises any tax lien knowing that the property is not subject to taxation or that the taxes advertised have been paid is guilty of a Class 3 misdemeanor, and shall be required to pay the injured party all damages sustained in consequence."

SECTION 3. G.S. 105-374(c) reads as rewritten:

"(c) Parties; Summonses. – The ~~listing taxpayer~~owner of record as of the date the taxes became delinquent and spouse (if any), ~~the current owner,~~any subsequent owner, all other taxing units having tax liens, all other lienholders of record, and all persons who would be entitled to be made parties to a court action (in which no deficiency judgment is sought) to foreclose a mortgage on such property, shall be made parties and served with summonses in the manner provided by G.S. 1A-1, Rule 4.

The fact that the ~~listing taxpayer~~owner of record as of the date the taxes became delinquent, any subsequent owner, or any other defendant is a minor, is incompetent, or is under any other disability shall not prevent or delay the tax lien sale or the foreclosure of the tax lien; and all such persons shall be made parties and served with summons in the same manner as in other civil actions.

Persons who have disappeared or who cannot be located and persons whose names and whereabouts are unknown, and all possible heirs or assignees of such persons, may be served by publication; and such persons, their heirs, and assignees may be designated by general description or by fictitious names in such an action."

SECTION 4. G.S. 105-375(b) reads as rewritten:

(b) Docketing Certificate of Taxes as Judgment. – In lieu of following the procedure set forth in G.S. 105-374, the governing body of any taxing unit may direct the tax collector to file with the clerk of superior court, no earlier than 30 days after the tax liens were advertised, a certificate showing the following: the name of the taxpayer~~listing real property on which the taxes are a lien,~~ as defined in G.S. 105-273(17), for each parcel on which the taxing unit has a lien for unpaid taxes, together with the amount of taxes, penalties, interest, and costs that are a lien thereon; the year or years for which the taxes are due; and a description of the property sufficient to permit its identification by parol testimony. The fees for docketing and indexing the certificate shall be payable to the clerk of superior court at the time the taxes are collected or the property is sold."

SECTION 5. G.S. 105-375(c) reads as rewritten:

"(c) Notice ~~Listing~~ to Taxpayer and Others. –

(1) Notice Required. – The tax collector filing the certificate provided for in subsection ~~(b), above,~~(b) of this section, shall, at least 30 days prior to docketing the judgment, send notice of the tax lien foreclosure a ~~registered or certified letter, return receipt requested,~~ to the ~~listing taxpayer at his~~taxpayer, as defined in G.S. 105-273(17), at the taxpayer's last known address, and to all lienholders of record who have a lien against the ~~listing~~ taxpayer ~~or against any subsequent owner of the property~~ (including any liens referred to in the conveyance of the property to the taxpayer).~~listing taxpayer or to the subsequent owner of the property), stating that the judgment will be docketed and the execution will be issued thereon in the manner provided by law. A notice stating that the judgment will be docketed and that execution will be issued thereon shall also be mailed by certified or registered mail, return receipt requested, to the current owner of the property (if different from the listing owner) if: (i) a deed or other instrument transferring title to and containing the name of the current owner was recorded in the office of the register of deeds or filed or docketed in the office of the clerk of superior court after January 1 of the first year in which the property was listed in the name of the listing owner, and (ii) the tax collector can obtain the current owner's mailing address through the exercise of due diligence.~~

(2) Contents of Notice. – All notice required by this subsection shall state that a judgment will be docketed and the proposed date of the docketing, that execution will be issued as provided by law, a brief description of the real property affected, and that the lien may be satisfied prior to judgment being entered.

(3) Service of Notice. – The notice required by this subsection shall be sent to the taxpayer by registered or certified mail, return receipt requested.

(4) Additional Efforts May Be Required. – If within 10 days following the mailing of ~~said letters of~~ the notice, a return receipt has not been received by the tax collector indicating receipt of the ~~letter,~~ notice, then the tax collector shall ~~have~~ do both of the following:

a. Make reasonable efforts to locate and notify the taxpayer and all lienholders of record prior to the docketing of the judgment and the issuance of the execution. Reasonable efforts may include posting the notice in a conspicuous place on the property, or, if the property has an address to which mail may be delivered, mailing the notice by first-class mail to the attention of the occupant.

b. Have a notice published in a newspaper of general circulation in ~~said~~ the county once a week for two consecutive weeks directed to, and naming, all unnotified lienholders and the ~~listing~~ taxpayer that a judgment will be docketed against the ~~listing~~ taxpayer. ~~The notice shall contain the proposed date of such docketing, that execution will issue thereon as provided by law, a brief description of the real property affected, and notice that the lien may be paid off prior to judgment being entered.~~

(4) Costs of Notice Added to Lien. – All costs of mailing and publication, plus a charge of fifty dollars ($50.00) to defray administrative costs, shall be added to the amount of taxes that are a lien on the real property and shall be paid by the taxpayer to the taxing unit at the time the taxes are collected or the property is sold."

SECTION 6. G.S. 105-375(i) reads as rewritten:

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

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

(2) In lieu of personal service of notice on the ~~owner of the property,~~ taxpayer, the sheriff shall send notice by registered or certified ~~mail~~ mail, return receipt requested, ~~notice shall be mailed~~ to the ~~listing owner~~ taxpayer at the ~~listing owner's~~ taxpayer's last known address at

least 30 days prior to the day fixed for the sale. ~~The notice must also be mailed to the current owner by registered or certified mail if notice was required to be mailed to the current owner pursuant to subsection (c) of this section.~~ If within 10 days following the mailing of the notice, a return receipt has not been received by the sheriff indicating receipt of the notice, then the sheriff shall make additional efforts to locate and notify the taxpayer and all lienholders of record of the sale under execution in accordance with subdivision (4) of subsection (c) of this section.

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

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

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

SECTION 7. Chapter 39 of the General Statutes is amended by adding the following new Article to read:

"Article 10.

"Real Property Tax Proration.

"**§ 39-60. Property tax proration on sale of real property.**

Unless otherwise provided by contract, property taxes on the real property being sold shall be prorated between the seller and buyer of the real property on a calendar-year basis."

SECTION 8. G.S. 105-273(8a) reads as rewritten:

"(8a) "Inventories" means (i) goods held for sale in the regular course of business by manufacturers, retail and wholesale merchants, and contractors, and (ii) goods held by contractors to be furnished in the course of building, installing, repairing, or improving real property. As to manufacturers, the term includes raw materials, goods in process, and finished goods, as well as other materials or supplies that are consumed in manufacturing or processing, or that accompany and become a part of the sale of the property being sold. The term also includes a modular home as defined in G.S. 105-164.3(21b) that is used exclusively as a display model and held for eventual sale at the retail merchant's place of business. The term also includes crops, livestock, poultry, feed used in the production of livestock and poultry, and other agricultural or horticultural products held for sale, whether in

process or ready for sale. The term does not include fuel used in manufacturing or processing, nor does it include materials or supplies not used directly in manufacturing or processing. As to retail and wholesale merchants and contractors, the term includes, in addition to articles held for sale, packaging materials that accompany and become a part of the sale of the property being sold."

SECTION 9. The Revenue Laws Study Committee shall study and recommend any changes to the special class of property taxed on the basis of the value of the property at its present use. The study shall include an evaluation of the following:

(1) Expanding the present-use value system to include wildlife land and other conservation land.

(2) Adding more specific land resource management criteria to the sound management programs required for lands enrolled in the present-use value system.

The Committee shall make a report of its findings and recommendations to the 2007 General Assembly.

SECTION 10. Section 7 of this act becomes effective for contracts entered into on or after October 1, 2006. Section 9 of this act is effective when it becomes law. The remainder of this act is effective for taxes imposed for taxable years beginning on or after July 1, 2006.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 1451

Short Title:	Amend Delinquent Property Tax Collection.	(Public)
Sponsors:	Senators Hartsell, Clodfelter, Dalton, Hoyle, Kerr, Webster; and Boseman.	
Referred to:	Finance.	

May 17, 2006

A BILL TO BE ENTITLED

AN ACT TO ENFORCE COLLECTION OF PROPERTY TAXES ON REAL PROPERTY AGAINST THE RECORD OWNER AS OF THE DATE THE TAXES BECOME DELINQUENT AND TO CODIFY THE PRORATION OF TAXES ON REAL PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-273(17) reads as rewritten:

"**§ 105-273. Definitions.**

When used in this Subchapter (unless the context requires a different meaning):

...

(17) "Taxpayer" means any person whose property is subject to ad valorem property taxation by any county or municipality and any person who, under the terms of this Subchapter, has a duty to list property for taxation. For purposes of collecting delinquent ad valorem taxes assessed on real property under G.S. 105-366 through G.S. 105-375, "taxpayer" means the owner of record on the date the taxes become delinquent and any subsequent owner of record of the real property if conveyed after that date."

SECTION 2. G.S. 105-369 reads as rewritten:

"**§ 105-369. Advertisement of tax liens on real property for failure to pay taxes.**

(a) Report of Unpaid Taxes That Are Liens on Real Property. – In February of each year, the tax collector must report to the governing body the total amount of unpaid taxes for the current fiscal year that are liens on real property. A county tax collector's report is due the first Monday in February, and a municipal tax collector's report is due the second Monday in February. Upon receipt of the report, the governing body must order the tax collector to advertise the tax liens. For purposes of this section, district taxes collected by county tax collectors shall be regarded as county taxes and district taxes collected by municipal tax collectors shall be regarded as municipal taxes.

(b) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1013.

(b1) Notice to Owner. – After the governing body orders the tax collector to advertise the tax liens, the tax collector must send a notice to the ~~listing owner and to the~~ record owner of each affected parcel of property, as determined as of ~~December 31 of the fiscal year for which the taxes are due.~~the date the taxes became delinquent. The notice must be sent to each owner's last known address by first-class mail at least 30 days before the date the advertisement is to be published. The notice must state the principal amount of unpaid taxes that are a lien on the parcel to be advertised and inform the owner that the ~~names~~ name of ~~the listing owner and~~ the record owner as of the date the taxes became delinquent will appear in a newspaper advertisement of delinquent taxes if the taxes are not paid before the publication date. Failure to mail the notice required by this section to the correct ~~listing owner or~~ record owner does not affect the validity of the tax lien or of any foreclosure action.

(c) Time and Contents of Advertisement. – A tax collector's failure to comply with this subsection does not affect the validity of the taxes or tax liens. The county tax collector shall advertise county tax liens by posting a notice of the liens at the county courthouse and by publishing each lien at least one time in one or more newspapers having general circulation in the taxing unit. The municipal tax collector shall advertise municipal tax liens by posting a notice of the liens at the city or town hall and by publishing each lien at least one time in one or more newspapers having general circulation in the taxing unit. Advertisements of tax liens shall be made during the period March 1 through June 30. The costs of newspaper advertising shall be paid by the taxing unit. If the taxes of two or more taxing units are collected by the same tax collector, the tax liens of each unit shall be advertised separately unless, under the provisions of a special act or contractual agreement between the taxing units, joint advertisement is permitted.

The posted notice and newspaper advertisement shall set forth the following information:

~~(1) In the case of property that the listing owner has not transferred after January 1 preceding the fiscal year for which the tax liens are advertised, the name of each person to whom is listed real property on which the taxing unit has a lien for unpaid taxes, in alphabetical order.~~

(1a) ~~In the case of property that the listing owner has transferred after January 1 preceding the fiscal year for which the tax liens are advertised, the name of the record owner as of December 31 of each parcel on which the taxing unit has a lien for unpaid taxes, in alphabetical order, followed by a notation that the property was transferred to the record owner and a notation of the name of the listing owner.~~The name of the record owner as of the date the taxes became delinquent for each parcel on which the taxing unit has a lien for unpaid taxes, in alphabetical order.

(1b) After the information required by subdivision ~~(1) or~~ (1a) of this subsection for each parcel, a brief description of each parcel of land to

which a lien has attached and a statement of the principal amount of the taxes constituting a lien against the parcel.

(2) A statement that the amounts advertised will be increased by interest and costs and that the omission of interest and costs from the amounts advertised will not constitute waiver of the taxing unit's claim for those items.

(3) In the event the list of tax liens has been divided for purposes of advertisement in more than one newspaper, a statement of the names of all newspapers in which advertisements will appear and the dates on which they will be published.

(4) A statement that the taxing unit may foreclose the tax liens and sell the real property subject to the liens in satisfaction of its claim for taxes.

(d) Costs. – Each parcel of real property advertised pursuant to this section shall be assessed an advertising fee to cover the actual cost of the advertisement. Actual advertising costs per parcel shall be determined by the tax collector on any reasonable basis. Advertising costs assessed pursuant to this subsection are taxes.

(e) Payments during Advertising Period. – At any time during the advertisement period, any parcel may be withdrawn from the list by payment of the taxes plus interest that has accrued to the time of payment and a proportionate part of the advertising fee to be determined by the tax collector. Thereafter, the tax collector shall delete that parcel from any subsequent advertisement, but the tax collector is not liable for failure to make the deletion.

(f) Listing and Advertising in Wrong Name. – No tax lien is void because the real property to which the lien attached was listed or advertised in the name of a person other than the person in whose name the property should have been listed for taxation if the property was in other respects correctly described on the abstract or in the advertisement.

(g) Wrongful Advertisement. – Any tax collector or deputy tax collector who willfully advertises any tax lien knowing that the property is not subject to taxation or that the taxes advertised have been paid is guilty of a Class 3 misdemeanor, and shall be required to pay the injured party all damages sustained in consequence."

SECTION 3. G.S. 105-374(c) reads as rewritten:

"(c) Parties; Summonses. – The ~~listing taxpayer~~owner of record as of the date the taxes became delinquent and spouse (if any), ~~the current owner;~~any subsequent owner, all other taxing units having tax liens, all other lienholders of record, and all persons who would be entitled to be made parties to a court action (in which no deficiency judgment is sought) to foreclose a mortgage on such property, shall be made parties and served with summonses in the manner provided by G.S. 1A-1, Rule 4.

The fact that the ~~listing taxpayer~~owner of record, any subsequent owner, or any other defendant is a minor, is incompetent, or is under any other disability shall not prevent or delay the tax lien sale or the foreclosure of the tax lien; and all such persons shall be made parties and served with summons in the same manner as in other civil actions.

Persons who have disappeared or who cannot be located and persons whose names and whereabouts are unknown, and all possible heirs or assignees of such persons, may be served by publication; and such persons, their heirs, and assignees may be designated by general description or by fictitious names in such an action."

SECTION 4. G.S. 105-375(c) reads as rewritten:

"(c) Notice Listing Taxpayer and Others. – The tax collector filing the certificate provided for in subsection (b), above, shall, at least 30 days prior to docketing the judgment, send a registered or certified letter, return receipt requested, to the ~~listing taxpayer at his~~owner of record as of the date the taxes became delinquent at the owner's last known address, and to all lienholders of record who have a lien against the ~~listing taxpayer~~owner of record or against any subsequent owner of the property (including any liens referred to in the conveyance of the property to the ~~listing taxpayer~~owner of record or to the subsequent owner of the property), stating that the judgment will be docketed and the execution will be issued thereon in the manner provided by law. ~~A notice stating that the judgment will be docketed and that execution will be issued thereon shall also be mailed by certified or registered mail, return receipt requested, to the current owner of the property (if different from the listing owner) if: (i) a deed or other instrument transferring title to and containing the name of the current owner was recorded in the office of the register of deeds or filed or docketed in the office of the clerk of superior court after January 1 of the first year in which the property was listed in the name of the listing owner, and (ii) the tax collector can obtain the current owner's mailing address through the exercise of due diligence.~~ If within 10 days following the mailing of said letters of notice, a return receipt has not been received by the tax collector indicating receipt of the letter, then the tax collector shall have a notice published in a newspaper of general circulation in said county once a week for two consecutive weeks directed to, and naming, all unnotified lienholders and the ~~listing taxpayer~~owner of record that a judgment will be docketed against the ~~listing taxpayer.~~owner of record. The notice shall contain the proposed date of such docketing, that execution will issue thereon as provided by law, a brief description of the real property affected, and notice that the lien may be paid off prior to judgment being entered. All costs of mailing and publication, plus a charge of fifty dollars ($50.00) to defray administrative costs, shall be added to the amount of taxes that are a lien on the real property and shall be paid by the taxpayer to the taxing unit at the time the taxes are collected or the property is sold."

SECTION 5. Chapter 39 of the General Statutes is amended by adding the following new Article to read:

"Article 10.

"Real Property Tax Proration.

"**§ 39-60. Property tax proration on sale of real property.**

Unless otherwise provided by contract, property taxes on the real property being sold shall be prorated between the seller and buyer of the real property on a calendar-year basis."

SECTION 6. Section 5 of this act becomes effective for contracts entered into on or after October 1, 2006. The remainder of this act is effective for taxes imposed for taxable years beginning on or after July 1, 2006.

SENATE BILL 1451:
Delinquent Property Tax/Inventory/Study

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 26, 2006
Introduced by:	Sen. Hartsell	**Summary by:**	Martha Walston
Version:	PCS to First Edition H1451-CSLA		Committee Counsel

SUMMARY: Senate Bill 1451 is a recommendation of the Revenue Laws Study Committee. It amends the property tax laws by relieving the seller of personal liability for property taxes assessed on real property when the seller transfers the property before the taxes become delinquent or when the seller transfers the property before it is annexed by the taxing unit and taxes are imposed by the taxing unit:

- *Authorizes the tax collector to enforce the remedy of attachment and garnishment against the record owner of real property as of the date the taxes on the real property become delinquent and any subsequent owner of record instead of the listing owner.*
- *Requires the tax collector to send the notice of a tax lien on real property to the record owner of the property as determined as of the date property taxes become delinquent instead of the listing owner of the property. The advertisement must also state the name of the record owner instead of the listing owner.*
- *Amends the definition of "Taxpayer" in the property tax laws to clarify that when collecting delinquent taxes assessed on real property, "taxpayer" means owner of record on the date the taxes become delinquent and any subsequent owner of record of the real property if conveyed after the delinquent date.*

The bill also amends Chapter 39 of the General Statutes by adding a new Article that codifies the practice of prorating property taxes on a calendar-year basis when the property is sold, unless the parties' contract states otherwise.

The proposed committee substitute does the following:

- *Adds language to the notice requirements for foreclosure on the property or execution sale when there is a tax lien on the property. The language sets out additional reasonable steps that must be taken in an attempt to provide notice when the government knows that its notice attempt has failed. This language is required because of a recent U.S. Supreme Court decision.*
- *Amends the definition of "inventory" in the property tax statutes to clarify that the definition includes a modular home used exclusively as a display model and held for eventual sale at the retailer's place of business.*
- *Directs the Revenue Laws Study Committee to study the present-use value system, including expansion of the system to include wildlife land and other conservation land, and adding criteria to the sound management programs.*
- *Makes clarifying changes.*

CURRENT LAW: Under North Carolina property tax laws, the date of January 1 applies to the following events:

- The date the value of real property is determined for tax purposes.
- The date property is listed in the name of the owner on that date.
- The date a tax lien attaches to the real property.

The owner of the property as of January 1 generally receives a property tax bill in July or August for property taxes owing on the property for the fiscal year that runs from July 1 of the year the property is required to be listed to the following June 30. Taxes become due and payable on September 1, and are payable at face amount if paid before January 6 following the due date. Taxes are delinquent if paid on or after January 6 following the due date and are subject to interest charges.[1] For example, if a taxpayer lists his or her property on January 1, 2006, then taxes on the property become due on September 1, 2006, for the fiscal year beginning July 1, 2006, and ending June 30, 2007. Taxes on the property are delinquent beginning January 6, 2007.[2]

In February of each year, the tax collector must report to the governing body the total amount of unpaid taxes for the current fiscal year that are liens on real property. After the governing body orders the tax collector to advertise tax liens, the tax collector must send a notice to the record owner of each affected parcel as determined as of December 31 of the fiscal year for which taxes are due. If the property was transferred during the one year period beginning on the listing date preceding the fiscal year in which the taxes become due, then the notice of tax lien on the property must be sent to each listing owner and record owner of the parcel as determined as of December 31 of the fiscal year for which taxes are due. The notice must inform the owners that their names will appear in a newspaper advertisement of delinquent taxes if the taxes are not paid before the publication date. If the listing owner transferred the property after the listing date, the advertisement will state the record owner's name followed by a notation that the property was transferred to the record owner and a notation of the name of the listing owner.

In addition to the remedy of foreclosing on the real property, the taxing unit may also attach and garnish the wages and other compensation, rents, bank deposits, and other intangible personal property of the listing owner of the property. Attachment and garnishment may only be enforced against the listing owner because the pertinent statutes provide that the remedy may be enforced against the taxpayer. Taxpayer is defined in G.S. 105-273(17) as the person whose property is subject to property tax by a county or municipality and any person who has a duty to list property for taxation.

---

[1] For the period January 6 to February 1, interest rate accrues at 2%. For the period February 1 until the principal amount of taxes, the accrued interest, and any penalties are paid, interest accrues at the rate of ¾% a month or fraction thereof.

[2] When real property is acquired after January 1, but prior to July 1, and the property was not subject to taxation on January 1 on account of its exempt status, it is listed for tax by the transferee as of the date of acquisition and is appraised at its true value as of January 1 preceding the date of acquisition. The property is taxed for the fiscal year of the taxing unit beginning on July 1 of the year in which it is acquired.

BILL ANALYSIS: Senate Bill 1451 is an attempt to solve the following problems:

- Seller conveys real property to Buyer on July 8, 2006. After the transfer, Buyer petitions for annexation to the city. On October 2006, seller receives a bill due September 1, 2006 for the partial year annexation. If Seller does not pay this before January 6, 2007, the tax collector can garnish Seller's bank account, because Seller was the owner of the property on the listing date. (January 1 immediately preceding the beginning of the fiscal year to which the annexation becomes effective) G.S. 160A-58.10.

- Seller conveys real property to Buyer in May, 2006. The closing attorney prorates the taxes giving Buyer credit for the months Seller owned the property and directs Buyer to pay the taxes. Buyer does not pay the taxes by January 6, 2007. Seller disregards the notice of delinquent taxes because he had his share of the taxes deducted from his net proceeds at closing and Seller believes his share of taxes was paid at closing. The tax collector has the authority to garnish the wages of Seller.

Section 1 of the bill amends the definition of "Taxpayer" in the property tax laws so that for purposes of collecting delinquent property taxes assessed on real property, the remedies against personal property may only be enforced against the record owner of the real property on the date the taxes become delinquent and against any subsequent record owner of the real property if conveyed after the delinquent date. This means that the tax collector would have the authority to garnish the wages, bank account, or other intangible property of the owner of the property at the time the taxes on that property become delinquent and any subsequent record owner instead of the listing owner of the property.

Section 2 of the bill provides that the notice of the tax lien would be sent to the record owner of the real property as of the date the taxes became delinquent instead of the listing owner. The advertisement of the tax lien would not set out the name of the listing owner, unless the listing owner and owner of record on the delinquent date is the same person.

Section 7 of the bill codifies the practice of prorating property taxes between the seller and buyer of real property on a calendar-year basis, unless the contract states otherwise.

Sections 5 and 6 of the bill adds language to the notice requirements for a tax lien foreclosure and execution sale of property in order to comply with the notice requirements of *Jones v. Flowers,* decided by the U.S. Supreme Court in April, 2006. In that case, mailed notice of a tax sale was returned unclaimed. The Government then published a notice of public sale in the newspaper. The U.S. Supreme Court held that when the government becomes aware prior to selling the property that its notice attempt has failed, then it must take additional reasonable steps to attempt to provide notice to the property owner before selling his property, if it is practicable to do so. The Court suggested that the Government could have mailed the notice by regular mail or posted notice on the property.

Section 8 of the bill amends the definition of inventory to include a modular home that is used exclusively as a display model and held for eventual sale at the retail merchant's place of business. "Modular home" is defined as a factory-built structure that is designed to be used as a dwelling, is manufactured in accordance with the specifications for modular homes under the North Carolina State Residential Building Code, and bears a seal or label issued by the

Department of Insurance pursuant to G.S. 143-139.1. This language clarifies that a modular home satisfying the proposed language would be classified as inventory and not taxed as real property.

Section 9 of the bill directs the Revenue Laws Study Committee to study the present-use value system.

EFFECTIVE DATE: The bill is effective for taxes imposed for taxable years beginning on or after July 1, 2006, except that section 7 becomes effective for contracts entered into on or after October 1, 2006 and section 9 is effective when it becomes law.

S1451e1-SMLA-CSLA

GENERAL ASSEMBLY OF NORTH CAROLINA
Session 2005

FISCAL ANALYSIS MEMORANDUM

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

DATE: June 26, 2006

TO: Sen. Hartsell

FROM: Rodney Bizzell
Fiscal Research Division

RE: PCS 1451v.1

FISCAL IMPACT

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

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES:					
Local Governments	*See Assumptions and Methodology*				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Department of Revenue

EFFECTIVE DATE: Section 7 of this act becomes effective for contracts entered into on or after October 1, 2006. The remainder of this act is effective upon ratification and applies to tax years beginning on or after July 1, 2006.

BILL SUMMARY:
This bill makes the following changes to the property tax laws to relieve the seller of personal liability for property taxes assessed on real property when the seller transfers the property before the taxes become delinquent or when the seller transfers the property before it is annexed by the taxing unit and taxes are imposed by the taxing unit:

- Authorizes the tax collector to enforce the remedy of attachment and garnishment against the record owner of real property as of the date the taxes on the real property become delinquent instead of the listing owner of the real property.
- Requires the tax collector to send the notice of a tax lien on real property to the record owner of the property as determined as of the date property taxes become delinquent and to any subsequent record owner instead of the listing owner of the property. The

advertisement must also state the names of the record owner and any subsequent owner instead of the listing owner.

- Amends the definition of "Taxpayer" in the property tax laws to clarify that when collecting delinquent taxes assessed on real property, "taxpayer" means owner of record on the date the taxes become delinquent and any subsequent owner of record of the real property if conveyed after the delinquent date.
- Amends Chapter 39 of the General Statutes by adding a new Article that codifies the practice of prorating property taxes on a calendar-year basis when the property is sold.

The proposed committee substitute exempts display model modular homes from property tax by amending the definition of "inventory" in the property tax statutes to clarify that the definition includes a modular home used exclusively as a display model and held for eventual sales at the retailer's place of business. The PCS also does the following:

- Adds language to the notice requirements for foreclosure on the property or execution sale when there is a tax lien on the property. The language sets out additional reasonable steps that must be taken in an attempt to provide notice when the government knows that its notice attempt has failed. This language is required because of a recent U.S. Supreme Court decision.
- Directs the Revenue Laws Study Committee to study the present-use value system, including expansion of the system to include wildlife land and other conservation land, and adding criteria to the sound management programs.
- Makes clarifying changes.

ASSUMPTIONS AND METHODOLOGY:
The bill corrects the problems that occur when an owner sells property after the listing date, and the property taxes later become delinquent under the new owner. Current law allows the tax assessor to use remedies of attachment and wage garnishment against the listing owner. This bill allows tax assessors to use these tax collection remedies against owner of record as opposed to the listing owner. The bill does not change the types of remedies available to assessors and is not projected to significantly impact revenue collection.

The NC Manufactured Housing Institute is not aware of any counties that currently treat display models as taxable real property. The revenue impact for any county currently assessing such property would be minimal given the limited number of affected properties. A county with a property tax rate of 75 cents, for example, with three dealers, each with 3 display models with an average assessed value of $150,000, would lose $10,125 in revenue as a result of the bill.

Other changes in the PCS are procedural or clarifying in nature and have no fiscal impact.

SOURCES OF DATA: NC Department of Revenue, NC Manufactured Housing Institute

TECHNICAL CONSIDERATIONS: None

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☐ Committee Substitute for

SB 1451 A BILL TO BE ENTITLED AN ACT TO ENFORCE COLLECTION OF PROPERTY TAXES ON REAL PROPERTY AGAINST THE RECORD OWNER AS OF THE DATE THE TAXES BECOME DELINQUENT AND TO CODIFY THE PRORATION OF TAXES ON REAL PROPERTY.

☒ With a favorable report as to the House committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

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

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 1372

Short Title:	Property Tax Due Date Change.	(Public)
Sponsors:	Senator Rand.	
Referred to:	Finance.	

May 16, 2006

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE GOVERNING BODY OF A TAXING UNIT MAY COLLECT PROPERTY TAXES FOR CERTAIN NEWLY ANNEXED PROPERTY OVER A THREE-YEAR PERIOD AND DELAY THE ACCRUAL OF INTEREST ACCORDINGLY.

The General Assembly of North Carolina enacts:

SECTION 1. A taxing unit's governing body may by resolution provide that, notwithstanding the provisions of G.S. 105-360 regarding the due date and accrual of interest, G.S. 105-380 and G.S. 105-381 regarding the release, refund, and compromise of taxes, and G.S. 160A-58.10 regarding the taxation of newly annexed property, property taxes for the partial fiscal year October 1, 2005, through June 30, 2006, shall be collected over a three-year period with one-third due and payable on September 1, 2006, one-third due and payable on September 1, 2007, and the remaining one-third due and payable on September 1, 2008. The resolution may provide that interest accrues on unpaid property taxes only to the extent that the property taxes have become due and payable under the payment schedule set out in the resolution. To the extent property taxes are due and payable pursuant to a resolution adopted under this act, interest accruing on taxes that remain unpaid shall be computed according to the schedule stated in G.S. 105-360. A resolution adopted pursuant to this act applies only to taxes for the partial fiscal year October 1, 2005, through June 30, 2006, on property located in an area that was annexed between January 1, 2003, and January 1, 2006, and for which effective date of the annexation was set by judicial order.

SECTION 2. If a resolution adopted by a taxing unit's governing body pursuant to this act delays the due date, accrual of interest, or both for any property taxes, the tax collector's obligations under G.S. 160A-58.10 and G.S. 105-360 with respect to those taxes are delayed to the same extent.

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

SENATE BILL 1372:
Property Tax Due Date Change

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 23, 2006
Introduced by:	Sen. Rand	**Summary by:**	Martha Walston
Version:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 1372 authorizes a taxing unit to pass a resolution allowing property taxes for certain newly annexed property to be collected over a three-year period. It would apply only to taxes for the partial fiscal year of October 1, 2005 through June 30, 2006 on property located in an area that was annexed between January 1, 2003 and January 1, 2006 and for which effective date of the annexation was set by judicial order.***

CURRENT LAW: G.S. 160A-58.10 provides for the taxation of newly annexed territory. If an annexation becomes effective after September 1 and before the following July 1, the prorated taxes shall be due and payable on the first day of September of the next succeeding fiscal year. Taxes are billable for all full calendar months remaining in the fiscal year on the effective date of annexation.

BILL ANALYSIS: This bill would give property owners in the 27-square miles of territory annexed to the City of Fayetteville last year, three years to pay taxes owed from October 1, 2005 through June 30, 2006. One-third would be due and payable on September 1, 2006, one-third would be due and payable on September 1, 2007, and the remaining one-third would be due and payable on September 1, 2008. Otherwise, those nine months of property taxes would be due with the regular annual tax bill mailed in August, and the affected landowners would owe 21 months of property taxes at once.

This act is a Statewide act rather than a local one because it must be Statewide to avoid conflicting with the prohibition in the North Carolina constitution on certain local acts. Article II, Section 24(1)(k) of the State Constitution prohibits local acts that extend the time for collecting taxes or otherwise relieve a tax collector from the performance of his duty. Although the act is nominally Statewide, it applies only to Cumberland County because it applies only to taxes for property located in an area that was annexed between January 1, 2003 and January 1, 2006, and for which the effective date of the annexation was set by judicial order. The annexation to the City of Fayetteville became effective, by judicial order, on September 30, 2005.

EFFECTIVE DATE: This act would be effective when it becomes law.

BACKGROUND: In November 2003, the Fayetteville City Council approved a plan, over the objection of many residents, to annex over 40,000 residents and 27 square miles to the City of Fayetteville. The annexation was to become effective June 30, 2004. Residents of the Gates Four community filed the only timely challenge to the annexation. In March 2004, the city and the Gates Four Homeowners Association agreed to work toward a settlement, which was approved by a superior court judge in May 2004. Three other lawsuits were also filed. On June 29, 2004, the North Carolina Court of Appeals issued a stay delaying the annexation, but lifted the order a few days later. Based on the rulings of the Superior Court and the Court of Appeals, Fayetteville annexed the area and began providing services. Shortly thereafter, the North Carolina Supreme Court issued a stay. After a year of litigation, the North Carolina Supreme Court ultimately sided with the city, and after the United States Supreme Court declined to hear the case, the annexation became effective, by judicial order, on September 30, 2005.

Trina Griffin, counsel to Senate Finance, substantially contributed to this summary.
S1372e1-SMLA

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: Senate Bill 1372 (First Edition)

SHORT TITLE: Property Tax Due Date Change.

SPONSOR(S): Senator Rand

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES:					
City of Fayetteville	($4.2)	$2.1	$2.1	-	-

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: City of Fayetteville

EFFECTIVE DATE: Becomes effective when law.

BILL SUMMARY:

The bill allows a governing unit to collect property taxes for certain newly annexed property over a three-year period and delay the accrual of interest accordingly. The bill applies to taxes due for the partial fiscal year from October 1, 2005, through June 30, 2006, on property located in an area that was annexed between January 1, 2003, and January 1, 2006, and for which the effective date of the annexation was set by judicial order.

ASSUMPTIONS AND METHODOLOGY:

This bill would give property owners in the 27-square miles of territory annexed to the City of Fayetteville last year, three years to pay taxes owed from October 1, 2005 through June 30, 2006. One-third would be due and payable on September 1, 2006, one-third would be due and payable on September 1, 2007, and the remaining one-third would be due and payable on September 1, 2008. Otherwise, those nine months of property taxes would be due with the regular annual tax bill mailed in August, and the affected landowners would owe 21 months of property taxes at once.

According to the City of Fayetteville, the prorated property tax due for the annexed area amounts to approximately $6.5 million. The bill spreads this revenue over three years. This results in a revenue loss of $4.2 million in FY 2006-07, which is recovered in the following two years.

SOURCES OF DATA: City of Fayetteville

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Rodney Bizzell

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

Official
Fiscal Research Division
Publication

DATE: June 7, 2006

Signed Copy Located in the NCGA Principal Clerk's Offices

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☐ Committee Substitute for

SB 1372 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT THE GOVERNING BODY OF A TAXING UNIT MAY COLLECT PROPERTY TAXES FOR CERTAIN NEWLY ANNEXED PROPERTY OVER A THREE-YEAR PERIOD AND DELAY THE ACCRUAL OF INTEREST ACCORDINGLY.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 2339

Short Title:	Lincoln County Tax Certification.	(Local)
Sponsors:	Representative Kiser.	
Referred to:	Local Government II.	

May 23, 2006

A BILL TO BE ENTITLED

AN ACT TO ALLOW LINCOLN COUNTY TO REQUIRE THAT ALL TAXES BE PAID ON REAL PROPERTY BEFORE THE REGISTER MAY RECORD A DEED TRANSFERRING THAT PROPERTY AND BEFORE A BUILDING PERMIT MAY BE ISSUED WITH RESPECT TO THAT PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 161-31(b) reads as rewritten:

"(b) Applicability. – This section applies only to Anson, Beaufort, Bertie, Cabarrus, Camden, Carteret, Cherokee, Chowan, Clay, Cleveland, Currituck, Davidson, Duplin, Durham, Edgecombe, Forsyth, Gaston, Gates, Graham, Granville, Halifax, Harnett, Haywood, Henderson, Hertford, Hyde, Iredell, Jackson, Johnston, Lee, Lenoir, Lincoln, Macon, Madison, Martin, Montgomery, Nash, Northampton, Onslow, Pasquotank, Pender, Perquimans, Person, Pitt, Polk, Robeson, Rockingham, Rowan, Rutherford, Stanly, Surry, Swain, Transylvania, Vance, Warren, Washington, Wilson, and Yadkin Counties."

SECTION 2. Section 3(b) of S.L. 2005-433 reads as rewritten:

"**SECTION 3.(b)** This section applies to Greene, Lenoir, Lincoln, Iredell, Wayne, and Yadkin Counties only."

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

HOUSE BILL 2339:
Lincoln County Tax Certification

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 27, 2006
Introduced by:	Rep. Kiser	**Summary by:**	Judy Collier
Version:	First Edition		Research Assistant

SUMMARY: House Bill 2339 adds Lincoln County to the list of counties that have the authority to require tax certification of a deed prior to recording. It would also allow the county to pass an ordinance prohibiting the issuance of a building permit to a person who owes delinquent property taxes on that property. HB 2339 received a favorable report from House Local Government II Committee on June 21, 2006.

The bill is effective when it becomes law.

CURRENT LAW: G.S. 161-31 provides that in certain counties, the board of county commissioners may adopt a resolution to require the register of deeds to refuse to register a deed unless the county tax collector has certified that no delinquent taxes are due on the property. The register of deeds must still accept an uncertified deed that is submitted for registration under the supervision of a closing attorney if the deed contains the following statement, *"This instrument prepared by: _____, a licensed North Carolina attorney. Delinquent taxes, if any, to be paid by the closing attorney to the county tax collector upon disbursement of closing proceeds."*

The following counties have received this authorization under G.S. 161-31: Anson, Beaufort, Bertie, Cabarrus, Camden, Carteret, Cherokee, Chowan, Clay, Cleveland, Currituck, Davidson, Duplin, Durham, Edgecombe, Forsyth, Gaston, Gates, Graham, Granville, Halifax, Harnett, Haywood, Henderson, Hertford, Hyde, Iredell, Jackson, Johnston, Lee, Lenoir, Macon, Madison, Martin, Montgomery, Nash, Northampton, Onslow, Pasquotank, Pender, Perquimans, Person, Pitt, Polk, Robeson, Rockingham, Rowan, Rutherford, Stanly, Surry, Swain, Transylvania, Vance, Warren, Washington, Wilson, and Yadkin Counties.

In addition to G.S. 161-31, the General Assembly has enacted similar laws that prohibit a register of deeds from registering deeds unless the tax collector has certified that no delinquent taxes are due. These provisions apply to the following local governments: Avery County (1963); Mitchell County (1987); Ashe County (1993); the Towns of Newland, Spruce Pine, and Alleghany County (1997); the Town of Banner Elk (1998); and the Town of Bakersville (1999).

In a county or local government where G.S. 161-31 and other similar State laws do not apply, the register of deeds registers deeds submitted for registration regardless of whether delinquent taxes are due on the property.

S.L. 2005-433, Sec. 3.(a) provides that a county may by ordinance provide that a building permit may not be issued to a person who owes delinquent property taxes on property owned by that person. The ordinance may provide that a building permit may be issued to a person who is protesting the assessment or collection of the property taxes. This law applies to Green, Lenoir, Iredell, Wayne and Yadkin Counties.

H2339e1-SMRE

Kory Goldsmith, Committee Counsel to House Local Government I Committee substantially contributed to this summary.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

ATTACHMENT 8

EDITION No. 1

H. B. No. 2339 DATE 6/27/06

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Howard
)
Sen.)

moves to amend the bill on page 1, line ~~2~~ 9

(X) WHICH CHANGES THE TITLE

by adding the word "Caswell," after the word "Carteret," and by adding the word "Davie," after the word "Davidson," and by amending the title by on page 1 line 2 by rewriting the line to read "AN ACT TO ALLOW CASWELL, DAVIE, AND LINCOLN COUNTIES TO REQUIRE THAT ALL TAXES BE".

SIGNED J. Howard

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☐ Committee Substitute for

HB 2339 A BILL TO BE ENTITLED AN ACT TO ALLOW LINCOLN COUNTY TO REQUIRE THAT ALL TAXES BE PAID ON REAL PROPERTY BEFORE THE REGISTER MAY RECORD A DEED TRANSFERRING THAT PROPERTY AND BEFORE A BUILDING PERMIT MAY BE ISSUED WITH RESPECT TO THAT PROPERTY.

☒ With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

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

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 2744*
PROPOSED COMMITTEE SUBSTITUTE H2744-CSLY-84 [v.4]

6/26/2006 4:34:44 PM

Short Title: Economic Development Program Modifications. (Public)

Sponsors:

Referred to:

May 30, 2006

A BILL TO BE ENTITLED

AN ACT TO MAKE MODIFICATIONS TO THE JOB DEVELOPMENT INVESTMENT GRANT PROGRAM, TO EXTEND THE WILLIAM S. LEE QUALITY JOBS AND BUSINESS EXPANSION ACT FOR CERTAIN TAXPAYERS, AND TO EXTEND CERTAIN SALES AND USE TAX REFUNDS.

The General Assembly of North Carolina enacts:

PART I. JDIG CHANGES

SECTION 1.1. G.S. 143B-437.51 reads as rewritten:

"**§ 143B-437.51. Definitions.**

The following definitions apply in this Part:

(1) Agreement. – A community economic development agreement under G.S. 143B-437.57.

(2) Base ~~years.~~period. – The ~~first 24 months following the date set by the Committee for performance to begin under the agreement.~~period of time set by the Committee during which new employees are to be hired for the positions on which the grant is based.

(3) Business. – A corporation, sole proprietorship, cooperative association, partnership, S corporation, limited liability company, nonprofit corporation, or other form of business organization, located either within or outside this State.

(4) Committee. – The Economic Investment Committee established pursuant to G.S. 143B-437.54.

(5) Eligible position. – A position created by a business and filled by a new full-time employee in this State during the base ~~years or in subsequent years of a grant.~~period.

(5a) Enterprise tier. – The classification assigned to an area pursuant to G.S. 105-129.3.

(6) Full-time employee. – A person who is employed for consideration for at least 35 hours a week, whose wages are subject to withholding under Article 4A of Chapter 105 of the General Statutes, and who is determined by the Committee to be employed in a permanent position according to criteria it develops in consultation with the Attorney General. The term does not include any person who works as an independent contractor or on a consulting basis for the business.

(7) New employee. – A full-time employee who represents a net increase in the number of the business's employees statewide. ~~The term includes an employee who previously filled an eligible position who is rehired or called back from a layoff that occurs during or following the base years to a vacant position previously held by that employee or to a new position established during or following the base years.~~

(8) Overdue tax debt. – Defined in G.S. 105-243.1.

(9) Related member. – Defined in G.S. 105-130.7A.

(10) Withholdings. – The amount withheld by a business from the wages of employees in eligible positions under Article 4A of Chapter 105 of the General Statutes."

SECTION 1.2. G.S. 143B-437.52 reads as rewritten:

"**§ 143B-437.52. Job Development Investment Grant Program.**

(a) Program. – There is established the Job Development Investment Grant Program to be administered by the Economic Investment Committee. In order to foster job creation and investment in the economy of this State, the Committee may enter into negotiated agreements with businesses to provide grants in accordance with the provisions of this Part. The Committee, in consultation with the Attorney General, shall develop criteria to be used in determining whether the conditions of this section are satisfied and whether the project described in the application is otherwise consistent with the purposes of this Part. Before entering into an agreement, the Committee must find that all the following conditions are met:

(1) The project proposed by the business will create, during the term of the agreement, a net increase in employment in this State by the business.

(2) The project will benefit the people of this State by increasing opportunities for employment and by strengthening this State's economy by, for example, providing worker training opportunities, constructing and enhancing critical infrastructure, increasing development in strategically important industries, or increasing the State and local tax base.

(3) The project is consistent with economic development goals for the State and for the area where it will be located.

(4) A grant under this Part is necessary for the completion of the project in this State.

(5) The total benefits of the project to the State outweigh its costs and render the grant appropriate for the project.

(b) Cap. – The maximum number of agreements the Committee may enter into each calendar year is 25.

(c) Ceiling. – ~~The~~ Except as provided in this section, the maximum amount of total annual liability for grants for agreements entered into in any single calendar ~~year~~ year, including amounts transferred to the Utility Account pursuant to G.S. 143B-437.61, may not exceed fifteen million dollars ($15,000,000). The maximum amount of total annual liability for grants for agreements entered into in 2006, including amounts transferred to the Utility Account pursuant to G.S. 143B-437.61, may not exceed thirty million dollars ($30,000,000). No agreement may be entered into that, when considered together with other existing agreements entered into during that calendar year, could cause the State's potential total annual liability for grants entered into in that calendar year to exceed this amount.

(d) Measuring Employment. – For the purposes of subdivision (a)(1) of this section and G.S. 143B-437.51(5), 143B-437.51(7), and 143B-437.57(a)(11), the Committee may designate that the increase or maintenance of employment is measured at the level of a division or another operating unit of a business, rather than at the business level, if both of the following conditions are met:

(1) The Committee makes an explicit finding that the designation is necessary to secure the project in this State.

(2) The ~~designation~~ agreement contains terms to ensure that the business does not create eligible positions by transferring or shifting to the project existing positions from another project of the business or a related member of the business."

SECTION 1.3. G.S. 143B-437.53(b) reads as rewritten:

"(b) Ineligible Businesses. – A project that consists solely of retail facilities is not eligible for a grant under this Part. If a project consists of both retail facilities and nonretail facilities, only the portion of the project consisting of nonretail facilities is eligible for a grant, and only the withholdings from employees in eligible positions that are employed exclusively in the portion of the project that represents nonretail facilities may be used to determine the amount of the grant. If a warehouse facility is part of a retail facility and supplies only that retail facility, the warehouse facility is not eligible for a grant. For the purposes of this Part, catalog distribution centers are not retail facilities.

A project that consists of a professional or semiprofessional sports team or ~~club~~ club, other than a professional motorsports racing team, is not eligible for a grant under this Part."

SECTION 1.4. G.S. 143B-437.55 reads as rewritten:

"**§ 143B-437.55. Applications; fees; reports; study.**

(a) Application. – A business shall apply, under oath, to the Committee for a grant on a form prescribed by the Committee that includes at least all of the following:

(1) The name of the business, the proposed location of the project, and the type of activity in which the business will engage at the project site or sites.
(2) The names and addresses of the principals or management of the business, the nature of the business, and the form of business organization under which it is operated.
(3) The financial statements of the business prepared by a certified public accountant and any other financial information the Committee considers necessary.
(4) The number of eligible positions proposed to be created ~~during the base years and thereafter~~for the project and the salaries for these positions.
(5) An estimate of the total withholdings.
(6) Certification that the business will provide health insurance to ~~all~~ full-time employees of the ~~project.~~project as required by G.S. 143B-437.53(c).
(7) Information concerning other locations, including locations in other states and countries, being considered for the project and the nature of any benefits that would accrue to the business if the project were to be located in one of those locations.
(8) Information concerning any other State or local government incentives for which the business is applying or that it has an expectation of receiving.
(9) Any other information necessary for the Committee to evaluate the application.

A business may apply, in one consolidated application in a form and manner determined by the Committee, for a grant on its own behalf as a business and for grants on behalf of the related members of the business who may qualify under this Part.

The Committee will consider an application by a business for grants on behalf of its related members only if the related members for whom the application is submitted have assigned to the business any claim of right the related members may have under this Part to apply for grants individually during the term of the agreement and have agreed to cooperate with the business in providing to the Committee all the information required for the initial application and the agreement, and any other information the Committee may require for the purposes of this Part. The applicant business is responsible for providing to the Committee all the information required under this Part.

If a business applies for a grant on behalf of its related members, the related members included in the application may be permitted to meet the qualifications for a grant collectively by participating in a project that meets the requirements of this Part. The amount of a grant may be calculated under the terms of this Part as if the related members were all collectively one business entity. Any conditions for a grant, other than the number of eligible positions created, apply to each related member who is listed in the application as participating in the project. The grants awarded shall be paid to the applicant business. A grant received under this Part by a business may be

apportioned to the related members in a manner determined by the business. In order for an agreement to be executed, each related member included in the application must sign the agreement and agree to abide by its terms.

(b) Application Fee. – When filing an application under this section, the business must pay the Committee a fee of five thousand dollars ($5,000). The fee is due at the time the application is filed. ~~The Secretary of Commerce, the Secretary of Revenue, and the Director of the Office of State Budget and Management shall determine the allocation of the fee imposed by this section among their agencies.~~ The proceeds of the fee ~~are receipts of the agency to which they are credited.~~ shall be credited to the General Fund.

(c) Annual Reports. – The Committee shall publish a report on the Job Development Investment Grant Program on or before April 30 of each year. The report shall include the following:

(1) A listing of each community economic development agreement negotiated and entered into during the preceding calendar year, including the name of the business, the cost/benefit analysis conducted by the Committee during the application process, a description of the project, the term of the agreement, the percentage used to determine the amount of the grant, and the amount of the grant made under the agreement during that year.

(2) An update on the status of projects under agreements entered into before the preceding calendar year.

(3) The number and enterprise tier area of eligible positions created by projects with respect to which grants were awarded.

(3a) A listing of the employment level for all businesses receiving a grant and any changes in those levels from the level of the next preceding year.

(4) The wage levels of all eligible positions created by projects with respect to which grants are awarded, aggregated and listed in increments of five thousand dollars ($5,000).

(5) The amount of new income tax revenue received from withholdings related to the projects for which grants were awarded.

(6) The criteria developed by the Committee, in consultation with the Attorney General, to implement this Part and any changes in those criteria from the previous calendar year.

(7) The effectiveness of the program in recruiting new and expanding businesses.

(8) The environmental impact of businesses that have received grants under the program.

(9) The geographic distribution of grants, by number and amount, awarded under the program.

(10) An explanation of whether the projects with respect to which agreements are entered into involve new businesses in the State or expanding existing businesses in the State.

(11) A listing of all businesses making an application under this Part and an explanation of whether each business ultimately located the project in this State regardless of whether the business was awarded a grant for the project under this Part.

~~(12) The division and use of fees collected by the Committee under this section and under G.S. 143B-437.58.~~

(13) The total amount transferred to the Utility Account of the Industrial Development Fund under this Part during the preceding year.

(d) Quarterly Reports. – The Committee shall publish a report on the Job Development Investment Grant Program within two months of the end of each quarter. This report shall include a listing of each community economic development agreement negotiated and entered into during the preceding quarter, including the name of the business, the cost/benefit analysis conducted by the Committee during the application process, a description of the project, and the amount of the grant expected to be made under the agreement during the current fiscal year.

(e) Study. – The Committee shall conduct a study to determine the minimum funding level required to implement the Job Development Investment Grant Program successfully. The Committee shall report the results of this study to the House of Representatives Finance Committee, the Senate Finance Committee, the House of Representatives Appropriations Subcommittee on Natural and Economic Resources, the Senate Appropriations Committee on Natural and Economic Resources, and the Fiscal Research Division no later than March 1 of each year."

SECTION 1.5. G.S. 143B-437.56 reads as rewritten:

"**§ 143B-437.56. Calculation of minimum and maximum grants; factors considered.**

(a) Subject to the limitations of subsection (d) of this section, the amount of the grant awarded in each case shall be a percentage of the withholdings of eligible positions. The percentage shall be no less than ten percent (10%) and no more than seventy-five percent (75%) of the withholdings of the eligible positions for a period of years. The percentage used to determine the amount of the grant shall be based on criteria developed by the Committee, in consultation with the Attorney General, after considering at least the following:

(1) The number of eligible positions to be created.

(2) The expected duration of those positions.

(3) The type of contribution the business can make to the long-term growth of the State's economy.

(4) The amount of other financial assistance the project will receive from the State or local governments.

(5) The total dollar investment the business is making in the project.

(6) Whether the project utilizes existing infrastructure and resources in the community.

(7) Whether the project is located in a development zone.

(8) The number of eligible positions that would be filled by residents of a development zone.

(9) The extent to which the project will mitigate unemployment in the State and locality.

(b) The term of the grant shall not exceed 12 years starting with the first year a grant payment is made. The first grant payment must be made within six years after the date on which the grant was awarded. The number of years in the base period for which grant payments may be made shall not exceed five years.

(c) The grant may be based only on eligible positions created during the base ~~years, unless the Committee makes an explicit determination that the grant shall also be based on additional eligible positions created during the remainder of the term of the grant.~~period.

(d) ~~The percentage established in the agreement shall be reduced by one-fourth for~~For any eligible position that is located in an enterprise tier four or five ~~area.~~area, seventy-five percent (75%) of the annual grant approved for disbursement shall be payable to the business and twenty-five percent (25%) shall be payable to the Utility Account pursuant to G.S. 143B-437.61. A position is located in the enterprise tier area that has been assigned to the county in which the project is located, at the time the application is filed with the Committee.

(e) A business that is receiving any other grant by operation of State law may not receive an amount as a grant pursuant to this Part that, when combined with any other grants, exceeds seventy-five percent (75%) of the withholdings of the business, unless the Committee makes an explicit finding that the additional grant is necessary to secure the project.

(f) The amount of a grant associated with any specific eligible ~~position~~ position, including any amount transferred to the Utility Account pursuant to G.S. 143B-437.61, may not exceed six thousand five hundred dollars ($6,500) in any year."

SECTION 1.6. G.S. 143B-437.57(a) reads as rewritten:

"(a) Terms. – Each community economic development agreement shall include at least the following:

(1) A detailed description of the proposed project that will result in job creation and the number of new employees to be hired ~~in~~ during the base ~~years and later years.~~period.

(2) The term of the grant and the criteria used to determine the first year for which the grant may be claimed.

(3) The number of eligible positions that are subjects of the grant and a description of those positions and the location of those positions.

(4) The amount of the grant based on a percentage of withholdings.

(5) A method for determining the number of new employees hired during a grant year.

(6) A method for the business to report annually to the Committee the number of eligible positions for which the grant is to be made.

(7) A requirement that the business report to the Committee annually the aggregate amount of withholdings during the grant year.

(8) A provision permitting an audit of the payroll records of the business by the Committee from time to time as the Committee considers necessary.

(9) A provision that requires the Committee to amend an agreement pursuant to G.S. 143B-437.59.

(10) A provision that requires the business to maintain operations at the project location or another location approved by the Committee for at least one hundred fifty percent (150%) of the term of the grant and a provision to permit the Committee to recapture all or part of the grant at its discretion if the business does not remain at the site for the required term.

(11) A provision that requires the business to maintain employment levels in this State at the level of the year immediately preceding the base ~~years.~~period.

(12) A provision establishing the conditions under which the grant agreement may be terminated, in addition to those under G.S. 143B-437.59, and under which grant funds may be recaptured by the Committee.

(13) A provision stating that unless the agreement is amended or terminated pursuant to G.S. 143B-437.59, the agreement is binding and constitutes a continuing contractual obligation of the State and the business.

(14) A provision setting out any allowed variation in the terms of the agreement that will not subject the business to amendment or termination of the agreement under G.S. 143B-437.59.

(15) A provision that prohibits the business from manipulating or attempting to manipulate employee withholdings with the purpose of increasing the amount of the grant and that requires the Committee to terminate the agreement and take action to recapture grant funds if the Committee finds that the business has manipulated or attempted to manipulate withholdings with the purpose of increasing the amount of the grant.

(16) A provision requiring that the business engage in fair employment practices as required by State and federal law and a provision encouraging the business to use small contractors, minority contractors, physically handicapped contractors, and women contractors whenever practicable in the conduct of its business.

(17) A provision encouraging the business to hire North Carolina residents.

(18) A provision encouraging the business to use the North Carolina State Ports.

(19) A provision stating that the State is not obligated to make any annual grant payment unless and until the State has received withholdings from the business in an amount that exceeds the amount of the grant payment.

(20) A provision describing the manner in which the amount of a grant will be measured and administered to ensure compliance with the provisions of G.S. 143B-437.52(c).

(21) A provision stating that any recapture of a grant and any amendment to an agreement reducing the amount of the grant or the term of the agreement must, at a minimum, be proportional to the failure to comply measured relative to the condition or criterion with respect to which the failure occurred.

(22) A provision stating that any disputes over interpretation of the agreement shall be submitted to binding arbitration.

(23) A provision stating that the amount of a grant associated with any specific eligible ~~position~~ position, including any amount transferred to the Utility Account pursuant to G.S. 143B-437.61, may not exceed six thousand five hundred dollars ($6,500) in any year.

(24) A provision stating that the business agrees to submit to an audit at any time that the Committee requires one.

(25) A provision encouraging the business to contract with small businesses headquartered in the State for goods and services."

SECTION 1.7. G.S. 143B-437.58 reads as rewritten:

"**§ 143B-437.58. Grant recipient to submit records.**

(a) No later than March 1 of each year, for the preceding grant year, every business that is awarded a grant under this Part shall submit to the Committee a report showing withholdings as a condition of its continuation in the grant program. In addition, during the base period, the business shall submit to the Committee an annual payroll report showing the eligible positions that ~~are~~ have been created during the ~~base years and the new eligible positions created during each subsequent~~preceding calendar year and, subsequent to the base period, the business shall submit to the Committee an annual report showing the eligible positions that remain filled at the end of each year of the grant. Annual reports submitted to the Committee shall include social security numbers of individual employees identified in the reports. Upon request of the Committee, the business shall also submit a copy of its State and federal tax returns. Payroll and tax ~~information~~ information, including social security numbers of individual employees and State and federal tax returns, submitted under this subsection ~~is~~ are tax information subject to G.S. 105-259. Aggregated payroll or withholding tax information submitted or derived under this subsection is not tax information subject to G.S. 105-259. When making a submission under this section, the business must pay the Committee a fee of one thousand five hundred dollars ($1,500). The fee is due at the time the submission is made. ~~The Secretary of Commerce, the Secretary of Revenue, and the Director of the Office of State Budget and Management shall determine the allocation of the fee imposed by this section among their agencies.~~ The proceeds of the fee ~~are receipts of the agency to which they are credited.~~shall be credited to the General Fund.

(b) The Committee may require any information that it considers necessary to effectuate the provisions of this Part.

(c) The Committee may require any business receiving a grant to submit to an audit at any time.

(d) The reporting procedures of this section are in lieu of any other general reporting requirements relating to private entities that receive State funds."

SECTION 1.8. G.S. 143B-437.59 reads as rewritten:

"**§ 143B-437.59. Failure to comply with agreement.**

(a) If the business receiving a grant fails to meet or comply with any condition or requirement set forth in an agreement or with criteria developed by the Committee in consultation with the Attorney General, the Committee shall amend the agreement to reduce the amount of the grant or the term of the agreement and may terminate the agreement. Any reduction of the grant is applicable to the grant year immediately following the grant year in which the ~~Committee amends~~business fails to comply with the agreement. The reduction in the amount or the term must, at a minimum, be proportional to the failure to comply measured relative to the condition or criterion with respect to which the failure occurred.

(b) If a business fails to maintain employment at the levels stipulated in the agreement or otherwise fails to comply with any condition of the agreement for any two consecutive ~~years, the Committee shall terminate the agreement.~~years:

(1) If the business is still within the base period established by the Committee, the Committee shall withhold the grant payment for any consecutive year remaining in the base period in which the business fails to comply with any condition of the agreement and the Committee may extend the base period for up to 24 additional months. Under no circumstances may the Committee extend the base period by more than a total of 24 months. In no event shall the term of the grant be extended beyond the date set by the Committee at the time the Committee awarded the grant.

(2) If the business is no longer within the base period established by the Committee, the Committee shall terminate the agreement.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, if the Committee finds that the business has manipulated or attempted to manipulate employee withholdings with the purpose of increasing the amount of a grant, the Committee shall immediately terminate the agreement and take action to recapture any grant funds disbursed in any year in which the Committee finds the business manipulated or attempted to manipulate employee withholdings with the purpose of increasing the amount of the grant."

SECTION 1.9. G.S. 143B-437.60 reads as rewritten:

"**§ 143B-437.60. Disbursement of grant.**

A business may not receive an annual disbursement of a grant if, at the time of disbursement, the business has received a notice of an overdue tax debt and that overdue tax debt has not been satisfied or otherwise resolved. A business may receive an annual disbursement of a grant only after the Committee has certified ~~to the State Controller~~ that there are no outstanding overdue tax debts and that the business has met the terms and conditions of the agreement. No amount shall be disbursed to a business as a grant

under this Part in any year until the Secretary of Revenue has certified to the Committee (i) that there are no outstanding overdue tax debts of the business and (ii) the amount of withholdings received in that year by the Department of Revenue from the business. A business that has met the terms of the agreement shall make an annual certification of this to the Committee. The Committee shall require the business to provide any necessary evidence of compliance to verify ~~this information and certify to the State Controller~~ that the terms of the agreement have been met. The Committee shall ~~further~~ certify ~~to the State Controller~~ the grant amount ~~of a grant~~ for which the business is eligible under the agreement and the grant amount ~~of a grant~~ for which the business would be eligible under the agreement without regard to G.S. 143B-437.56(d). The ~~State Controller~~Department of Commerce shall remit a check to the business in the amount of the certified grant amount within 90 days of receiving the certification of the Committee."

SECTION 1.10. G.S. 143B-437.61 reads as rewritten:

"**§ 143B-437.61. Transfer to Industrial Development Fund.**

At the time the ~~State Controller~~Department of Commerce remits a check to a business under G.S. 143B-437.60, the ~~State Controller~~Department of Commerce shall transfer to the Utility Account of the Industrial Development Fund an amount equal to the amount certified by the Committee as the difference between the amount of the grant and the amount of the grant for which the business would be eligible without regard to G.S. 143B-437.56(d)."

SECTION 1.11. G.S. 143B-437.62 reads as rewritten:

"**§ 143B-437.62. Expiration.**

The authority of the Committee to enter into new agreements expires January 1, ~~2008.~~2010."

SECTION 1.12. There is appropriated from the General Fund to the Department of Commerce the sum of five hundred thousand dollars ($500,000) for the 2006-2007 fiscal year for the administration of the Job Development Investment Grant Program and the monitoring of grants under the Program. It is the intent of the General Assembly that this be a recurring appropriation.

SECTION 1.13. The Department of Commerce shall conduct a comprehensive, systematic study of the Job Development Investment Grant program. The study shall be completed and submitted to the Chairs of the House of Representatives and Senate Finance Committees and the House of Representatives and Senate Appropriations Committees no later than February 1, 2007. The study shall include an examination of the following:

(1) The costs of the program on an aggregate basis, an enterprise tier area basis, and a project basis. This study shall include an examination of the amount spent per job on an aggregate basis, an enterprise tier area basis, and a project basis.

(2) The costs of the program in relation to other State economic development incentive programs.

(3) The costs of the program in relation to economic development programs located in nearby states and other states with which the State frequently competes for jobs.

(4) The extent to which the program has been utilized in geographically diverse parts of the State and the extent to which the program has been utilized in urban, suburban, and rural settings.

SECTION 1.14. Section 1.12 of this part becomes effective July 1, 2006. The remainder of this part is effective when it becomes law.

PART II. BILL LEE ACT CHANGES

SECTION 2.1. G.S. 105-129.2A(a2) reads as rewritten:

"(a2) Sunset for Eligible Major Industries. – Notwithstanding subsection (a) of this section, in the case of a taxpayer that qualifies as an eligible major industry on or before January 1, ~~2006,~~2008, this Article is repealed effective for business activities that occur on or after January 1, 2010."

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

PART III. SALES TAX REFUND CHANGES

SECTION 3.1. G.S. 105-164.14(j) reads as rewritten:

"(j) Certain Industrial Facilities. – The owner of an eligible facility is allowed an annual refund of sales and use taxes as provided in this subsection.

(1) Refund. – The owner of an eligible facility is allowed an annual refund of sales and use taxes paid by it under this Article on qualified building materials, building supplies, fixtures, and equipment that become a part of the real property of the eligible facility. Liability incurred indirectly by the owner for sales and use taxes on these items is considered tax paid by the owner. Building materials, building supplies, fixtures, and equipment are qualified if they are installed in the construction of the facility. Purchases for subsequent repair, renovation, or equipment replacement are not qualified.

A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the State's fiscal year. Refunds applied for after the due date are barred.

(2) Eligibility. – A facility is eligible under this subsection if it meets ~~both~~ all of the following conditions:

a. It is primarily engaged in one of the industries listed in this subsection.

b. The Secretary of Commerce has certified that the owner of the facility will invest at least the required amount of private funds to construct the facility in this State. For the purpose of this subsection, costs of construction may include costs of acquiring and improving land for the facility and costs of equipment for the facility. If the facility is located in an enterprise tier one,

two, or three area as defined in G.S. 105-129.3, the required amount is fifty million dollars ($50,000,000). For all other facilities, the required amount is one hundred million dollars ($100,000,000). In the case of a computer manufacturing facility, the owner may invest these funds either directly or indirectly through a related entity or strategic partner as those terms are defined in G.S. 105-129.61. ~~In the case of a computer manufacturing facility,~~ For the purpose of this subsection, the term 'facility' has the same meaning as under G.S. 105-129.61.

c. If the facility is primarily engaged in financial services, securities operations and related systems development, it satisfies all of the following conditions:

1. It is owned and operated by the business for which the services are provided or by a related entity of that business as defined in G.S. 105-130.7A.
2. No part of it is leased to a third-party tenant that is not a related entity of the business.

(3) Industries. – This subsection applies to the following industries:

a. Air courier services. Air courier services has the same meaning as in G.S. 105-129.2.

b. Aircraft manufacturing. Aircraft manufacturing means manufacturing or assembling complete aircraft.

c. Bioprocessing. Bioprocessing means biomanufacturing or processing that includes the culture of cells to make commercial products, the purification of biomolecules from cells, or the use of these molecules in manufacturing.

d. Computer manufacturing. Computer manufacturing means manufacturing or assembling electronic computers, such as personal computers, workstations, laptops, and computer servers. The term includes the assembly or integration of processors, coprocessors, memory, storage, and input/output devices into a user-programmable final product. The term includes manufacturing or assembling computer peripheral equipment, such as storage devices, printers, monitors, input/output devices, and terminals only if the manufacture or assembly of this peripheral equipment occurs at a facility or campus at which the taxpayer also manufactures or assembles electronic computers.

f. Financial services, securities operations and related systems development. Financial services, securities operations and related systems development means one or both of the following functions:

1. Performing analysis, operations, trading, or sales functions for investment banking, securities dealing and

brokering, securities trading and underwriting, investment portfolio/mutual fund management, retirement services, or employee benefit administration.

2. Developing information technology systems and applications, managing and enhancing operating applications and databases, or providing, operating, and maintaining telecommunications networks and distributed mainframe computing services for investment banking, securities dealing and brokering, securities trading and underwriting, investment portfolio/mutual fund management, retirement services, or employee benefit administration.

g. Motor vehicle manufacturing. Motor vehicle manufacturing means any of the following:

1. Manufacturing complete automobiles and light-duty motor vehicles.
2. Manufacturing heavy-duty truck chassis and assembling complete heavy-duty trucks, buses, heavy-duty motor homes, and other special purpose heavy-duty motor vehicles for highway use.
3. Manufacturing complete military armored vehicles, nonarmored military universal carriers, combat tanks, and specialized components for combat tanks.

h. Reserved for future codification purposes.

i. Reserved for future codification purposes.

j. Pharmaceutical and medicine manufacturing and distribution of pharmaceuticals and medicines. Pharmaceutical and medicine manufacturing means any of the following:

1. Manufacturing biological and medicinal products. For the purpose of this sub-subdivision, a biological product is a preparation that is synthesized from living organisms or their products and used medically as a diagnostic, preventive, or therapeutic agent. For the purpose of this sub-subdivision, bacteria, viruses, and their parts are considered living organisms.
2. Processing botanical drugs and herbs by grading, grinding, and milling.
3. Isolating active medicinal principals from botanical drugs and herbs.
4. Manufacturing pharmaceutical products intended for internal and external consumption in forms such as ampoules, tablets, capsules, vials, ointments, powders, solutions, and suspensions.

k. Reserved for future codification purposes.

l. Reserved for future codification purposes.

m. Semiconductor manufacturing. Semiconductor manufacturing means development and production of semiconductor material, devices, or components.

(4) Forfeiture. – If the owner of an eligible facility does not make the required minimum investment within five years after the first refund under this subsection with respect to the facility, the facility loses its eligibility and the owner forfeits all refunds already received under this subsection. Upon forfeiture, the owner is liable for tax under this Article equal to the amount of all past taxes refunded under this subsection, plus interest at the rate established in G.S. 105-241.1(i), computed from the date each refund was issued. The tax and interest are due 30 days after the date of the forfeiture. A person that fails to pay the tax and interest is subject to the penalties provided in G.S. 105-236.

(5) Sunset. This subsection is repealed for sales made on or after January 1, ~~2010.~~2013."

SECTION 3.2. This part becomes effective July 1, 2006, and applies to purchases made on or after that date.

PART IV. EFFECTIVE DATE

SECTION 4. Except as otherwise provided, this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 2744*

Short Title:	Economic Development Program Modifications.	(Public)
Sponsors:	Representatives Owens, Daughtridge (Primary Sponsors); Faison and Wray.	
Referred to:	Finance.	

May 30, 2006

A BILL TO BE ENTITLED

AN ACT TO MAKE MODIFICATIONS TO THE JOB DEVELOPMENT INVESTMENT GRANT PROGRAM, TO EXTEND THE WILLIAM S. LEE QUALITY JOBS AND BUSINESS EXPANSION ACT FOR CERTAIN TAXPAYERS, AND TO EXTEND CERTAIN SALES AND USE TAX REFUNDS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-437.51 reads as rewritten:

"**§ 143B-437.51. Definitions.**

The following definitions apply in this Part:

(1) Agreement. – A community economic development agreement under G.S. 143B-437.57.

(2) Base ~~years.~~period. – The ~~first 24 months following the date set by the Committee for performance to begin under the agreement.~~period of time set by the Committee during which new employees are to be hired for the positions on which the grant shall be based.

(3) Business. – A corporation, sole proprietorship, cooperative association, partnership, S corporation, limited liability company, nonprofit corporation, or other form of business organization, located either within or outside this State.

(4) Committee. – The Economic Investment Committee established pursuant to G.S. 143B-437.54.

(5) Eligible position. – A position created by a business and filled by a new full-time employee in this State during the base ~~years or in subsequent years of a grant.~~period.

(5a) Enterprise tier. – The classification assigned to an area pursuant to G.S. 105-129.3.

(6) Full-time employee. – A person who is employed for consideration for at least 35 hours a week, whose wages are subject to withholding under Article 4A of Chapter 105 of the General Statutes, and who is determined by the Committee to be employed in a permanent position according to criteria it develops in consultation with the Attorney General. The term does not include any person who works as an independent contractor or on a consulting basis for the business.

(7) New employee. – A full-time employee who represents a net increase in the number of the business's employees statewide. ~~The term includes an employee who previously filled an eligible position who is rehired or called back from a layoff that occurs during or following the base years to a vacant position previously held by that employee or to a new position established during or following the base years.~~

(8) Overdue tax debt. – Defined in G.S. 105-243.1.

(9) Related member. – Defined in G.S. 105-130.7A.

(10) Withholdings. – The amount withheld by a business from the wages of employees in eligible positions under Article 4A of Chapter 105 of the General Statutes."

SECTION 2. G.S. 143B-437.52 reads as rewritten:

"**§ 143B-437.52. Job Development Investment Grant Program.**

(a) Program. – There is established the Job Development Investment Grant Program to be administered by the Economic Investment Committee. In order to foster job creation and investment in the economy of this State, the Committee may enter into negotiated agreements with businesses to provide grants in accordance with the provisions of this Part. The Committee, in consultation with the Attorney General, shall develop criteria to be used in determining whether the conditions of this section are satisfied and whether the project described in the application is otherwise consistent with the purposes of this Part. Before entering into an agreement, the Committee must find that all the following conditions are met:

(1) The project proposed by the business will create, during the term of the agreement, a net increase in employment in this State by the business.

(2) The project will benefit the people of this State by increasing opportunities for employment and by strengthening this State's economy by, for example, providing worker training opportunities, constructing and enhancing critical infrastructure, increasing development in strategically important industries, or increasing the State and local tax base.

(3) The project is consistent with economic development goals for the State and for the area where it will be located.

(4) A grant under this Part is necessary for the completion of the project in this State.

(5) The total benefits of the project to the State outweigh its costs and render the grant appropriate for the project.

(b) Cap. – The maximum number of agreements the Committee may enter into each calendar year is 25.

(c) Ceiling. – ~~The~~ Except as provided in this section, the maximum amount of total annual liability for grants for agreements entered into in any single calendar ~~year~~ year, including amounts transferred to the Utility Account pursuant to G.S. 143B-437.61, may not exceed fifteen million dollars ($15,000,000). The maximum amount of total annual liability for grants for agreements entered into in 2006, including amounts transferred to the Utility Account pursuant to G.S. 143B-437.61, may not exceed thirty million dollars ($30,000,000). No agreement may be entered into that, when considered together with other existing agreements entered into during that calendar year, could cause the State's potential total annual liability for grants entered into in that calendar year to exceed this amount.

(d) Measuring Employment. – For the purposes of subdivision (a)(1) of this section and G.S. 143B-437.51(5), 143B-437.51(7), and 143B-437.57(a)(11), the Committee may designate that the increase or maintenance of employment is measured at the level of a division or another operating unit of a business, rather than at the business level, if both of the following conditions are met:

(1) The Committee makes an explicit finding that the designation is necessary to secure the project in this State.

(2) The ~~designation~~ agreement contains terms to ensure that the business does not create eligible positions by transferring or shifting to the project existing positions from another project of the business or a related member of the business."

SECTION 3. G.S. 143B-437.53(b) reads as rewritten:

"(b) Ineligible Businesses. – A project that consists solely of retail facilities is not eligible for a grant under this Part. If a project consists of both retail facilities and nonretail facilities, only the portion of the project consisting of nonretail facilities is eligible for a grant, and only the withholdings from employees in eligible positions that are employed exclusively in the portion of the project that represents nonretail facilities may be used to determine the amount of the grant. If a warehouse facility is part of a retail facility and supplies only that retail facility, the warehouse facility is not eligible for a grant. For the purposes of this Part, catalog distribution centers are not retail facilities.

A project that consists of a professional or semiprofessional sports team or ~~club~~ club, other than a professional motorsports racing team, is not eligible for a grant under this Part."

SECTION 4. G.S. 143B-437.55 reads as rewritten:

"**§ 143B-437.55. Applications; fees; reports; study.**

(a) Application. – A business shall apply, under oath, to the Committee for a grant on a form prescribed by the Committee that includes at least all of the following:

(1) The name of the business, the proposed location of the project, and the type of activity in which the business will engage at the project site or sites.

(2) The names and addresses of the principals or management of the business, the nature of the business, and the form of business organization under which it is operated.
(3) The financial statements of the business prepared by a certified public accountant and any other financial information the Committee considers necessary.
(4) The number of eligible positions proposed to be created ~~during the base years and thereafter~~for the project and the salaries for these positions.
(5) An estimate of the total withholdings.
(6) Certification that the business will provide health insurance to ~~all~~ full-time employees of the ~~project.~~project as required by G.S. 143B-437.53(c).
(7) Information concerning other locations, including locations in other states and countries, being considered for the project and the nature of any benefits that would accrue to the business if the project were to be located in one of those locations.
(8) Information concerning any other State or local government incentives for which the business is applying or that it has an expectation of receiving.
(9) Any other information necessary for the Committee to evaluate the application.

A business may apply, in one consolidated application in a form and manner determined by the Committee, for a grant on its own behalf as a business and for grants on behalf of the related members of the business who may qualify under this Part.

The Committee will consider an application by a business for grants on behalf of its related members only if the related members for whom the application is submitted have assigned to the business any claim of right the related members may have under this Part to apply for grants individually during the term of the agreement and have agreed to cooperate with the business in providing to the Committee all the information required for the initial application and the agreement, and any other information the Committee may require for the purposes of this Part. The applicant business is responsible for providing to the Committee all the information required under this Part.

If a business applies for a grant on behalf of its related members, the related members included in the application may be permitted to meet the qualifications for a grant collectively by participating in a project that meets the requirements of this Part. The amount of a grant may be calculated under the terms of this Part as if the related members were all collectively one business entity. Any conditions for a grant, other than the number of eligible positions created, apply to each related member who is listed in the application as participating in the project. The grants awarded shall be paid to the applicant business. A grant received under this Part by a business may be apportioned to the related members in a manner determined by the business. In order for an agreement to be executed, each related member included in the application must sign the agreement and agree to abide by its terms.

(b) Application Fee. – When filing an application under this section, the business must pay the Committee a fee of five thousand dollars ($5,000). The fee is due at the time the application is filed. ~~The Secretary of Commerce, the Secretary of Revenue, and the Director of the Office of State Budget and Management shall determine the allocation of the fee imposed by this section among their agencies.~~ The proceeds of the fee ~~are receipts of the agency to which they are credited.~~ shall be credited to the General Fund.

(c) Annual Reports. – The Committee shall publish a report on the Job Development Investment Grant Program on or before April 30 of each year. The report shall include the following:

(1) A listing of each community economic development agreement negotiated and entered into during the preceding calendar year, including the name of the business, the cost/benefit analysis conducted by the Committee during the application process, a description of the project, the term of the agreement, the percentage used to determine the amount of the grant, and the amount of the grant made under the agreement during that year.

(2) An update on the status of projects under agreements entered into before the preceding calendar year.

(3) The number and enterprise tier area of eligible positions created by projects with respect to which grants were awarded.

(3a) A listing of the employment level for all businesses receiving a grant and any changes in those levels from the level of the next preceding year.

(4) The wage levels of all eligible positions created by projects with respect to which grants are awarded, aggregated and listed in increments of five thousand dollars ($5,000).

(5) The amount of new income tax revenue received from withholdings related to the projects for which grants were awarded.

(6) The criteria developed by the Committee, in consultation with the Attorney General, to implement this Part and any changes in those criteria from the previous calendar year.

(7) The effectiveness of the program in recruiting new and expanding businesses.

(8) The environmental impact of businesses that have received grants under the program.

(9) The geographic distribution of grants, by number and amount, awarded under the program.

(10) An explanation of whether the projects with respect to which agreements are entered into involve new businesses in the State or expanding existing businesses in the State.

(11) A listing of all businesses making an application under this Part and an explanation of whether each business ultimately located the project in

this State regardless of whether the business was awarded a grant for the project under this Part.

~~(12) The division and use of fees collected by the Committee under this section and under G.S. 143B-437.58.~~

(13) The total amount transferred to the Utility Account of the Industrial Development Fund under this Part during the preceding year.

(d) Quarterly Reports. – The Committee shall publish a report on the Job Development Investment Grant Program within two months of the end of each quarter. This report shall include a listing of each community economic development agreement negotiated and entered into during the preceding quarter, including the name of the business, the cost/benefit analysis conducted by the Committee during the application process, a description of the project, and the amount of the grant expected to be made under the agreement during the current fiscal year.

(e) Study. – The Committee shall conduct a study to determine the minimum funding level required to implement the Job Development Investment Grant Program successfully. The Committee shall report the results of this study to the House of Representatives Finance Committee, the Senate Finance Committee, the House of Representatives Appropriations Subcommittee on Natural and Economic Resources, the Senate Appropriations Committee on Natural and Economic Resources, and the Fiscal Research Division no later than March 1 of each year."

SECTION 5. G.S. 143B-437.56 reads as rewritten:

"**§ 143B-437.56. Calculation of minimum and maximum grants; factors considered.**

(a) Subject to the limitations of subsection (d) of this section, the amount of the grant awarded in each case shall be a percentage of the withholdings of eligible positions. The percentage shall be no less than ten percent (10%) and no more than seventy-five percent (75%) of the withholdings of the eligible positions for a period of years. The percentage used to determine the amount of the grant shall be based on criteria developed by the Committee, in consultation with the Attorney General, after considering at least the following:

(1) The number of eligible positions to be created.

(2) The expected duration of those positions.

(3) The type of contribution the business can make to the long-term growth of the State's economy.

(4) The amount of other financial assistance the project will receive from the State or local governments.

(5) The total dollar investment the business is making in the project.

(6) Whether the project utilizes existing infrastructure and resources in the community.

(7) Whether the project is located in a development zone.

(8) The number of eligible positions that would be filled by residents of a development zone.

(9) The extent to which the project will mitigate unemployment in the State and locality.

(b) The term of the grant shall not exceed 12 years starting with the first year a grant payment is made. The first grant payment must be made within six years after the date on which the grant was awarded.

(c) The grant may be based only on eligible positions created during the base ~~years, unless the Committee makes an explicit determination that the grant shall also be based on additional eligible positions created during the remainder of the term of the grant.~~period.

(d) ~~The percentage established in the agreement shall be reduced by one-fourth for~~For any eligible position that is located in an enterprise tier four or five ~~area.~~area, seventy-five percent (75%) of the annual grant approved for disbursement shall be payable to the business, and twenty-five percent (25%) shall be payable to the Utility Account pursuant to G.S. 143B-437.61. A position is located in the enterprise tier area that has been assigned to the county in which the project is located, at the time the application is filed with the Committee, or at the time the grant is awarded, in whichever period the enterprise tier designation is lower.

(e) A business that is receiving any other grant by operation of State law may not receive an amount as a grant pursuant to this Part that, when combined with any other grants, exceeds seventy-five percent (75%) of the withholdings of the business, unless the Committee makes an explicit finding that the additional grant is necessary to secure the project.

(f) The amount of a grant associated with any specific eligible ~~position~~ position, including any amount transferred to the Utility Account pursuant to G.S. 143B-437.61, may not exceed six thousand five hundred dollars ($6,500) in any year."

SECTION 6. G.S. 143B-437.57(a) reads as rewritten:

"(a) Terms. – Each community economic development agreement shall include at least the following:

(1) A detailed description of the proposed project that will result in job creation and the number of new employees to be hired ~~in~~ during the base ~~years and later years.~~period.

(2) The term of the grant and the criteria used to determine the first year for which the grant may be claimed.

(3) The number of eligible positions that are subjects of the grant and a description of those positions and the location of those positions.

(4) The amount of the grant based on a percentage of withholdings.

(5) A method for determining the number of new employees hired during a grant year.

(6) A method for the business to report annually to the Committee the number of eligible positions for which the grant is to be made.

(7) A requirement that the business report to the Committee annually the aggregate amount of withholdings during the grant year.

(8) A provision permitting an audit of the payroll records of the business by the Committee from time to time as the Committee considers necessary.

(9) A provision that requires the Committee to amend an agreement pursuant to G.S. 143B-437.59.

(10) A provision that requires the business to maintain operations at the project location or another location approved by the Committee for at least one hundred fifty percent (150%) of the term of the grant and a provision to permit the Committee to recapture all or part of the grant at its discretion if the business does not remain at the site for the required term.

(11) A provision that requires the business to maintain employment levels in this State at the level of the year immediately preceding the base ~~years.~~period.

(12) A provision establishing the conditions under which the grant agreement may be terminated, in addition to those under G.S. 143B-437.59, and under which grant funds may be recaptured by the Committee.

(13) A provision stating that unless the agreement is amended or terminated pursuant to G.S. 143B-437.59, the agreement is binding and constitutes a continuing contractual obligation of the State and the business.

(14) A provision setting out any allowed variation in the terms of the agreement that will not subject the business to amendment or termination of the agreement under G.S. 143B-437.59.

(15) A provision that prohibits the business from manipulating or attempting to manipulate employee withholdings with the purpose of increasing the amount of the grant and that requires the Committee to terminate the agreement and take action to recapture grant funds if the Committee finds that the business has manipulated or attempted to manipulate withholdings with the purpose of increasing the amount of the grant.

(16) A provision requiring that the business engage in fair employment practices as required by State and federal law and a provision encouraging the business to use small contractors, minority contractors, physically handicapped contractors, and women contractors whenever practicable in the conduct of its business.

(17) A provision encouraging the business to hire North Carolina residents.

(18) A provision encouraging the business to use the North Carolina State Ports.

(19) A provision stating that the State is not obligated to make any annual grant payment unless and until the State has received withholdings from the business in an amount that exceeds the amount of the grant payment.

(20) A provision describing the manner in which the amount of a grant will be measured and administered to ensure compliance with the provisions of G.S. 143B-437.52(c).

(21) A provision stating that any recapture of a grant and any amendment to an agreement reducing the amount of the grant or the term of the agreement must, at a minimum, be proportional to the failure to comply measured relative to the condition or criterion with respect to which the failure occurred.

(22) A provision stating that any disputes over interpretation of the agreement shall be submitted to binding arbitration.

(23) A provision stating that the amount of a grant associated with any specific eligible ~~position~~ position, including any amount transferred to the Utility Account pursuant to G.S. 143B-437.61, may not exceed six thousand five hundred dollars ($6,500) in any year.

(24) A provision stating that the business agrees to submit to an audit at any time that the Committee requires one.

(25) A provision encouraging the business to contract with small businesses headquartered in the State for goods and services."

SECTION 7. G.S. 143B-437.58 reads as rewritten:

"**§ 143B-437.58. Grant recipient to submit records.**

(a) No later than March 1 of each year, for the preceding grant year, every business that is awarded a grant under this Part shall submit to the Committee a report showing withholdings as a condition of its continuation in the grant program. In addition, during the base period, the business shall submit to the Committee an annual payroll report showing the eligible positions that ~~are~~ have been created during the ~~base years and the new eligible positions created during each subsequent~~preceding calendar year and, subsequent to the base period, the business shall submit to the Committee an annual report showing the eligible positions that remain filled at the end of each year of the grant. Upon request of the Committee, the business shall also submit a copy of its State and federal tax returns. Payroll and tax information and State and federal tax returns submitted under this subsection ~~is~~ are tax information subject to G.S. 105-259. Aggregated payroll or withholding tax information submitted or derived under this subsection is not tax information subject to G.S. 105-259. When making a submission under this section, the business must pay the Committee a fee of one thousand five hundred dollars ($1,500). The fee is due at the time the submission is made. ~~The Secretary of Commerce, the Secretary of Revenue, and the Director of the Office of State Budget and Management shall determine the allocation of the fee imposed by this section among their agencies.~~ The proceeds of the fee ~~are receipts of the agency to which they are credited.~~shall be credited to the General Fund.

(b) The Committee may require any information that it considers necessary to effectuate the provisions of this Part.

(c) The Committee may require any business receiving a grant to submit to an audit at any time.

(d) The reporting procedures of this section are in lieu of any other general reporting requirements relating to private entities that receive State funds."

SECTION 8. G.S. 143B-437.59 reads as rewritten:

"**§ 143B-437.59. Failure to comply with agreement.**

(a) If the business receiving a grant fails to meet or comply with any condition or requirement set forth in an agreement or with criteria developed by the Committee in consultation with the Attorney General, the Committee shall amend the agreement to reduce the amount of the grant or the term of the agreement and may terminate the agreement. Any reduction of the grant is applicable to the grant year immediately following the grant year in which the ~~Committee amends~~business fails to comply with the agreement. The reduction in the amount or the term must, at a minimum, be proportional to the failure to comply measured relative to the condition or criterion with respect to which the failure occurred.

(b) If a business fails to maintain employment at the levels stipulated in the agreement or otherwise fails to comply with any condition of the agreement for any two consecutive ~~years, the Committee shall terminate the agreement.~~years:

(1) If the business is still within the base period established by the Committee, the Committee shall withhold the grant for any consecutive year remaining in the base period in which the business fails to comply with any condition of the agreement, and the Committee may decide to extend the base period for up to 24 additional months.

(2) If the business is no longer within the base period established by the Committee, the Committee shall terminate the agreement.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, if the Committee finds that the business has manipulated or attempted to manipulate employee withholdings with the purpose of increasing the amount of a grant, the Committee shall immediately terminate the agreement and take action to recapture any grant funds disbursed in any year in which the Committee finds the business manipulated or attempted to manipulate employee withholdings with the purpose of increasing the amount of the grant."

SECTION 9. G.S. 143B-437.60 reads as rewritten:

"**§ 143B-437.60. Disbursement of grant.**

A business may not receive an annual disbursement of a grant if, at the time of disbursement, the business has received a notice of an overdue tax debt and that overdue tax debt has not been satisfied or otherwise resolved. A business may receive an annual disbursement of a grant only after the Committee has certified ~~to the State Controller~~ that there are no outstanding overdue tax debts and that the business has met the terms and conditions of the agreement. No amount shall be disbursed to a business as a grant under this Part in any year until the Secretary of Revenue has certified to the Committee (i) that there are no outstanding overdue tax debts of the business and (ii) the amount of withholdings received in that year by the Department of Revenue from the business. A business that has met the terms of the agreement shall make an annual certification of this to the Committee. The Committee shall require the business to provide any necessary evidence of compliance to verify ~~this information and certify to the State Controller~~ that the terms of the agreement have been met. The Committee shall ~~further~~ certify ~~to the State Controller~~ the grant amount ~~of a grant~~ for which the business is eligible under the agreement and the grant amount ~~of a grant~~ for which the business

would be eligible under the agreement without regard to G.S. 143B-437.56(d). The ~~State Controller~~Department of Commerce shall remit a check to the business in the amount of the certified grant amount within 90 days of receiving the certification of the Committee."

SECTION 10. G.S. 143B-437.61 reads as rewritten:

"**§ 143B-437.61. Transfer to Industrial Development Fund.**

At the time the ~~State Controller~~Department of Commerce remits a check to a business under G.S. 143B-437.60, the ~~State Controller~~Department of Commerce shall transfer to the Utility Account of the Industrial Development Fund an amount equal to the amount certified by the Committee as the difference between the amount of the grant and the amount of the grant for which the business would be eligible without regard to G.S. 143B-437.56(d)."

SECTION 11. G.S. 143B-437.62 reads as rewritten:

"**§ 143B-437.62. Expiration.**

The authority of the Committee to enter into new agreements expires January 1, ~~2008.~~2010."

SECTION 12. There is appropriated from the General Fund to the Department of Commerce the sum of five hundred thousand dollars ($500,000) for the 2006-2007 fiscal year for the administration of the Job Development Investment Grant Program and the monitoring of grants under the Program. It is the intent of the General Assembly that this be a recurring appropriation.

SECTION 13. G.S. 105-129.2A(a2) reads as rewritten:

"(a2) Sunset for Eligible Major Industries. – Notwithstanding subsection (a) of this section, in the case of a taxpayer that qualifies as an eligible major industry on or before January 1, ~~2006,~~2008, this Article is repealed effective for business activities that occur on or after January 1, 2010."

SECTION 14. G.S. 105-164.14(j) reads as rewritten:

"(j) Certain Industrial Facilities. – The owner of an eligible facility is allowed an annual refund of sales and use taxes as provided in this subsection.

(1) Refund. – The owner of an eligible facility is allowed an annual refund of sales and use taxes paid by it under this Article on qualified building materials, building supplies, fixtures, and equipment that become a part of the real property of the eligible facility. Liability incurred indirectly by the owner for sales and use taxes on these items is considered tax paid by the owner. Building materials, building supplies, fixtures, and equipment are qualified if they are installed in the construction of the facility. Purchases for subsequent repair, renovation, or equipment replacement are not qualified.

A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the State's fiscal year. Refunds applied for after the due date are barred.

(2) Eligibility. – A facility is eligible under this subsection if it meets both of the following conditions:

a. It is primarily engaged in one of the industries listed in this subsection.

b. The Secretary of Commerce has certified that the owner of the facility will invest at least the required amount of private funds to construct the facility in this State. For the purpose of this subsection, costs of construction may include costs of acquiring and improving land for the facility and costs of equipment for the facility. If the facility is located in an enterprise tier one, two, or three area as defined in G.S. 105-129.3, the required amount is fifty million dollars ($50,000,000). For all other facilities, the required amount is one hundred million dollars ($100,000,000). In the case of a computer manufacturing facility, the owner may invest these funds either directly or indirectly through a related entity or strategic partner as those terms are defined in G.S. 105-129.61. In the case of a computer manufacturing facility, the term "facility" has the same meaning as under G.S. 105-129.61.

(3) Industries. – This subsection applies to the following industries:

a. Air courier services. Air courier services has the same meaning as in G.S. 105-129.2.

b. Aircraft manufacturing. Aircraft manufacturing means manufacturing or assembling complete aircraft.

c. Bioprocessing. Bioprocessing means biomanufacturing or processing that includes the culture of cells to make commercial products, the purification of biomolecules from cells, or the use of these molecules in manufacturing.

d. Computer manufacturing. Computer manufacturing means manufacturing or assembling electronic computers, such as personal computers, workstations, laptops, and computer servers. The term includes the assembly or integration of processors, coprocessors, memory, storage, and input/output devices into a user-programmable final product. The term includes manufacturing or assembling computer peripheral equipment, such as storage devices, printers, monitors, input/output devices, and terminals only if the manufacture or assembly of this peripheral equipment occurs at a facility or campus at which the taxpayer also manufactures or assembles electronic computers.

e. Financial services and securities operations and systems development. Financial services and securities operations and systems development means the following, when performed at a facility no part of which is leased to third-party tenants and that is owned and operated by the business for which the services are provided:

1. Performing operations functions for investment banking, securities dealing and brokering, securities trading and underwriting, or investment portfolio/mutual fund management, and
2. Developing information technology systems, information technology applications, and software to support investment banking, securities dealing and brokering, securities trading and underwriting, or investment portfolio/mutual fund management.

f. Reserved for future codification purposes.

g. Motor vehicle manufacturing. Motor vehicle manufacturing means any of the following:
1. Manufacturing complete automobiles and light-duty motor vehicles.
2. Manufacturing heavy-duty truck chassis and assembling complete heavy-duty trucks, buses, heavy-duty motor homes, and other special purpose heavy-duty motor vehicles for highway use.
3. Manufacturing complete military armored vehicles, nonarmored military universal carriers, combat tanks, and specialized components for combat tanks.

h. Reserved for future codification purposes.

i. Reserved for future codification purposes.

j. Pharmaceutical and medicine manufacturing and distribution of pharmaceuticals and medicines. Pharmaceutical and medicine manufacturing means any of the following:
1. Manufacturing biological and medicinal products. For the purpose of this sub-subdivision, a biological product is a preparation that is synthesized from living organisms or their products and used medically as a diagnostic, preventive, or therapeutic agent. For the purpose of this sub-subdivision, bacteria, viruses, and their parts are considered living organisms.
2. Processing botanical drugs and herbs by grading, grinding, and milling.
3. Isolating active medicinal principals from botanical drugs and herbs.
4. Manufacturing pharmaceutical products intended for internal and external consumption in forms such as ampoules, tablets, capsules, vials, ointments, powders, solutions, and suspensions.

k. Reserved for future codification purposes.

l. Reserved for future codification purposes.

m. Semiconductor manufacturing. Semiconductor manufacturing means development and production of semiconductor material, devices, or components.

(4) Forfeiture. – If the owner of an eligible facility does not make the required minimum investment within five years after the first refund under this subsection with respect to the facility, the facility loses its eligibility and the owner forfeits all refunds already received under this subsection. Upon forfeiture, the owner is liable for tax under this Article equal to the amount of all past taxes refunded under this subsection, plus interest at the rate established in G.S. 105-241.1(i), computed from the date each refund was issued. The tax and interest are due 30 days after the date of the forfeiture. A person that fails to pay the tax and interest is subject to the penalties provided in G.S. 105-236.

(5) Sunset. This subsection is repealed for sales made on or after January 1, ~~2010.~~2013."

SECTION 15. Section 11 of this act becomes effective July 1, 2006. The remainder of this act is effective when it becomes law.

HOUSE BILL 2744:
Economic Development Program Modifications

BILL ANALYSIS

Committee:	House Finance	**Date:**	June 20, 2006
Introduced by:	Reps. Owens, Daughtridge	**Summary by:**	Canaan Huie
Version:	PCS to First Edition H2744-CSLY-84		Committee Counsel

SUMMARY: This bill would make numerous changes to the JDIG Program, the Bill Lee Act, and certain sales and use tax refunds. Most provisions of the bill would be effective when they became law.

CURRENT LAW: The Job Development Investment Grant (JDIG) Program was created in 2002 as a new economic development tool for new and expanding businesses in North Carolina. JDIG is used to attract businesses to the State by allowing a five-member committee to award grants to businesses. The amounts of the grants are based on income tax withholdings from new jobs created by the businesses.

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, and for worker training. In 2000, the General Assembly extended the sunset on the Act until January 1, 2006. During the 2005 Regular Session, the General Assembly further extended the Act until January 1, 2008. There are several exceptions to the 2006 sunset date, one of which involves eligible major industries. Eligible major industries that qualify as such before January 1, 2006, are 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, or semiconductor manufacturing.

The definition of eligible major industries for the purposes of the Bill Lee Act largely conforms to the list of taxpayers who are eligible for a refund on the sales and use taxes paid by the taxpayer on building materials for construction of a new facility in this State. Taxpayers that are eligible for the refund of sales and use taxes are not required to qualify as such by a specific date, but the refund provision does expire for purchases made on or after January 1, 2010.

BILL ANALYSIS:

Part I. JDIG Changes. This bill makes numerous changes to the JDIG program. Some of these changes significantly expand or extend the program, whereas others of these changes make changes intended to streamline the administration of the program, clarify certain aspects of the program, or reduce penalties for failure to comply with agreements under the program.

There are two changes in the bill that could significantly add to the costs of the program over the next 12-13 years. First, in section 1.2, this bill increases the maximum amount of total annual liability for agreements entered into during the 2006 calendar year from $15 million to $30 million. This change is effective for agreements entered into during 2006 only; for agreements entered into in later years, the maximum amount of the total annual liability would return to $15 million. Under the JDIG program, agreements entered into in one calendar year may result in annual grant payments for the succeeding 12 years. Therefore, an increase in the maximum amount of the total annual liability of $15 million for one

year could have a fiscal impact of up to $180 million over a 12-year period. Second, in Section 1.11, the bill extends the sunset on the JDIG program by an additional two years, through the end of the 2009 calendar year. As with the increase discussed above, this two-year extension of the program could have a significant fiscal impact stretching out for a dozen years or more.

In addition, this bill would make significant changes to the clawback provisions under the JDIG program. Under the JDIG program, the Economic Investment Committee (EIC), the entity that administers the JDIG program, is required to amend or terminate the agreement and to recapture all or part of a grant made in previous years under certain circumstances. If the business fails to comply with any term of the agreement or with criteria developed by the EIC, the EIC must amend the agreement and may terminate the agreement. This amendment may take the form of a lower percentage being used to determine the amount of the grant or of a shorter term for the agreement. The reduction must be proportional to the failure to comply with the agreement. If the business fails to comply with any term of the agreement or with criteria developed by the EIC for two consecutive years, the EIC must terminate the agreement. In addition, in each agreement the EIC must include a provision describing the conditions that will lead to recapture of a grant made in an earlier year.

Under this bill, the provisions relating to failure to comply with the agreement for two consecutive years would be amended so that termination of the agreement would not be required in all cases. Under this bill, if the business were still in the base period established by the EIC, the EIC would withhold the grant for any consecutive year remaining in the base period in which the business fails to comply with the agreement. The EIC would also have the option of extending the base period by up to 24 months over the amount specified in the original agreement in these cases. If the business did not come into compliance by the end of the base period, the agreement would be terminated. If the business were no longer in the base period established by the EIC, the EIC would be required to terminate the agreement. The effect of these changes would be to allow a company more leeway in meeting the terms of an agreement in the early years of the agreement.

This bill would also expand the types of entities that are eligible to enter into agreements under the program. When the JDIG program was originally created, all but two specific industries were eligible for grants under the program. Those two industries were retail operations and professional and semiprofessional sports teams and clubs. The exclusion of professional sports was put into place, in part, due to concerns that the intent behind the program was to attract one or more major league sports teams to the State. This bill would provide an exception to that exclusion in that professional motorsports racing teams would become eligible for grants under the program.

In addition, the bill makes changes to how fees collected under the program are directed and how corresponding positions that monitor the program are funded. Under current law, an applicant for a JDIG grant must pay a one-time application fee of $5,000. Grantees must then pay an annual fee of $1,500 to help offset monitoring costs. Currently, those fees are divided between the Departments of Commerce and Revenue, in the discretion of the EIC, to offset the costs of the two agencies associated with the program. Those fees then become departmental receipts. This bill would change that by crediting the fees to the General Fund and by providing for an appropriation of $500,000 to the Department of Commerce. It is the intent of the bill that this be a recurring appropriation.

The bill also makes the following changes:

- Changes references to "base years" to "base period" and allows the EIC to set the base period. Under current law, the base years are the first two years, unless the EIC decides on a different period. This clarifies that the EIC has authority to set that base period. The base period could not contain more than 5 years in which grant payments were to be made.

- Changes the definition of "new employee." Under current law, a "new employee" may include an employee that was originally hired in the base period, was subsequently laid off, and then was subsequently rehired by the company during the term of the agreement. This change would exclude these rehires from the definition of new employee.
- Clarifies that the $6,500 cap per new employee and the 75% cap on the amount of a grant apply to the total amounts and not just the amount that flows to the business. This is important because the amount of a grant is reduced by 25% for a position located in enterprise tier four or five with that portion instead being directed to the Utility Account of the Industrial Development Fund. This clarifies that the two caps apply to both the amount that flows to the business and the amount that flows to the Utility Account.
- Clarifies that social security numbers related to the positions on which a grant is based must be included with annual reports to the EIC. The change further clarifies that the social security numbers and State and federal tax returns are tax information, which is protected from disclosure under general laws related to public records.
- Removes the State Controller from the disbursement process. In 2004, a JDIG Reserve was created within the Department of Commerce. Due to the manner in which that Reserve was established, the State Controller is not directly involved with disbursements to businesses from the JDIG Reserve. This bill would relieve the State Controller of certain duties related to certification of grant amounts and remittance of payments to grantees and would transfer those duties to the Department of Commerce.
- Clarifies that the tier designation that determines whether a grant payment is subject to reduction is the designation that is in effect in the year in which the application is filed. Under current law, the amount of a grant is reduced by 25% if the position with respect to which the grant is awarded is located in an enterprise tier four or five area. Under the current law it is not clear when that determination is made – at the time the business applies for a grant, at the time a grant agreement is entered into, or at the time the grant payment is made.

Part II. Bill Lee Act Changes. Part II of this bill would extend the time period in which eligible major industries could qualify as such in order to qualify for the extension of the Bill Lee Act by two years. This provision would allow for an extension of the Bill Lee Act to the taxpayers that qualified as eligible major industries by January 1, 2008, rather than 2006.

Part III. Sales Tax Refund Changes. Part III of this bill would add analysis, operations, and systems development for securities operations and investment management as an industry that is eligible for the sales and use tax refund related to certain building materials. In addition, this part would extend the sunset on the sales and use tax refund for all eligible industries by three years, until January 1, 2013. The effect of this change would also be to make these types of taxpayers eligible for the extension of the Bill Lee Act discussed above.

EFFECTIVE DATE: Most provisions of this bill would be effective when the bill became law.

H2744e1-SMLY-CSLY-84

House Bill 2744 (Senate Bill 2006)
Economic Development Program Modifications

Sponsors: Rep. Bill Owens, Rep. Bill Daughtridge

JDIG Program

- Temporarily Increases Program Cap by $15 Million for 2006.
  - Would enable NC to compete for unusually large number of competitive projects in 2006.
  - Increase would be for 2006 grant year only.
  - Between 2003 and 2005, the JDIG Committee did not need to use $18 million of its available cap. This year it would have the ability to use up to $15 million more – but only if needed.
- Extends JDIG Program Through 2009.
- Allows Projects to Lock-in Distressed Tier Eligibility.
  - Enables projects that apply while a county is in a low tier (Tier 1-3) to receive larger, low-tier grants, even if county's tier changes to Tier 4 or 5 before the grant is awarded.
- Makes Motorsports Manufacturing Facilities Eligible for JDIG Grants.
- Allows Flexibility For Companies With Start-up Delays.
  - JDIG program requires companies that experience start-up delays to be kicked out. But when that happens, the business loses an incentive to complete their project.
  - The bill would give JDIG Committee flexibility to halt grant payments to companies experiencing delays, but give them an extra 2 years to create their jobs.
- Stabilizes JDIG Administrative and Monitoring Structure.

Lee Act Program

- Extends Secretary's authority though 2007 to designate "eligible major industries" for sunset extension.
  - When Lee Act was extended in 2005, this provision was inadvertently overlooked.

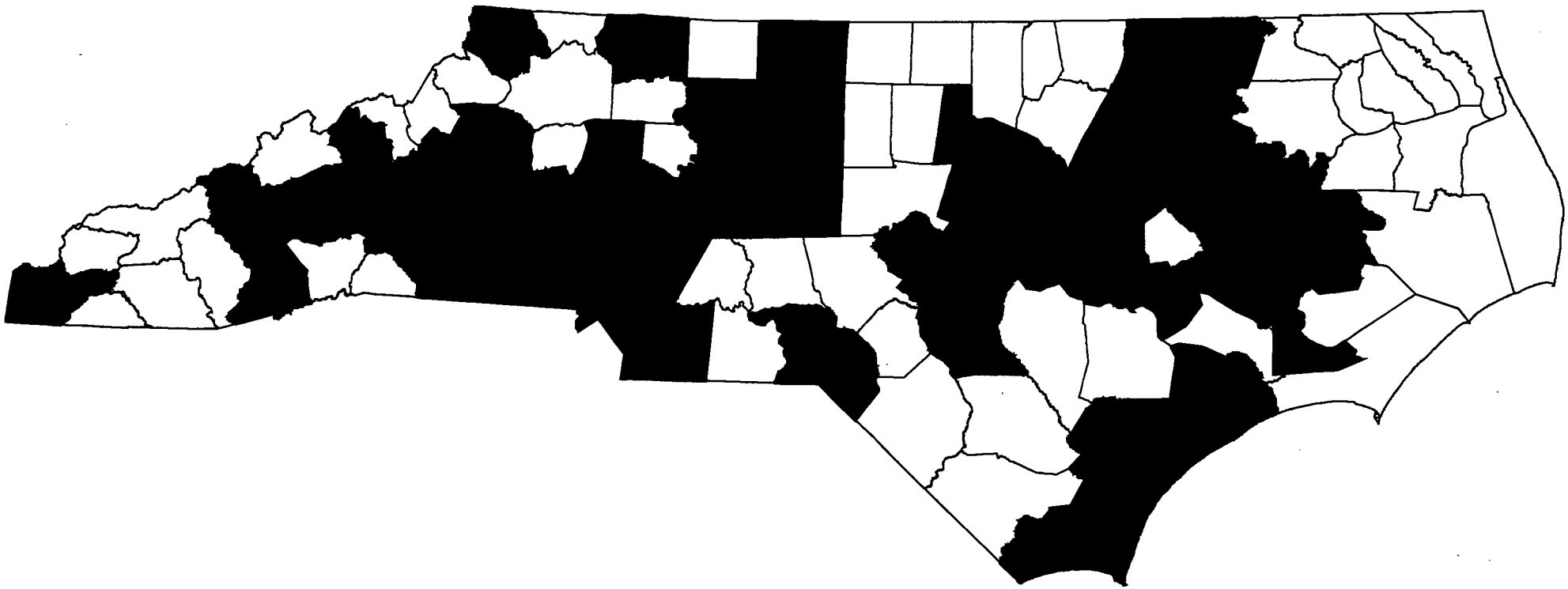
Sales Tax Refund on Construction Materials

- Make Investment Firm Support & IT Facilities Eligible for Refund
  - Helps make NC competitive for major Wall Street support facilities looking to locate outside of New York – a trend in the aftermath of 9/11.
- Extends Sunset Through 2012.
  - DOC has eligible projects with construction schedules beyond the current sunset date of January 1, 2010.

Ver. 6.26.06

NC Department of Commerce
Commerce Finance Center

Job Development Investment Grant Funds
Counties Where JDIG Grants Offered in Negotiations



JDIG Negotiated

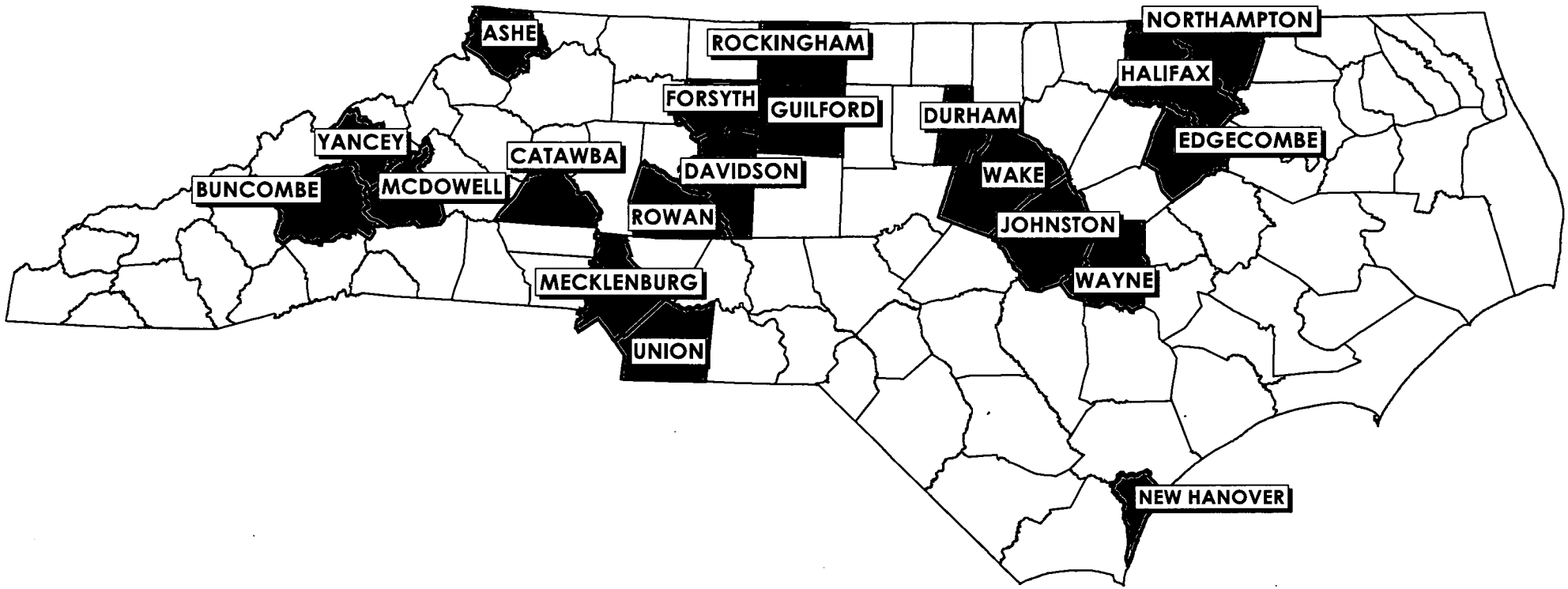
POLICY & RESEARCH Strategic Planning
A Division of the North Carolina Department of Commerce

Map prepared June 2006.

This map shows the geographic locations of all JDIG offered in negotiations.

NC Department of Commerce
Commerce Finance Center

Job Development Investment Grant Funds
Total Recipients by County 2003 to Present



JDIG Fund Awards by County

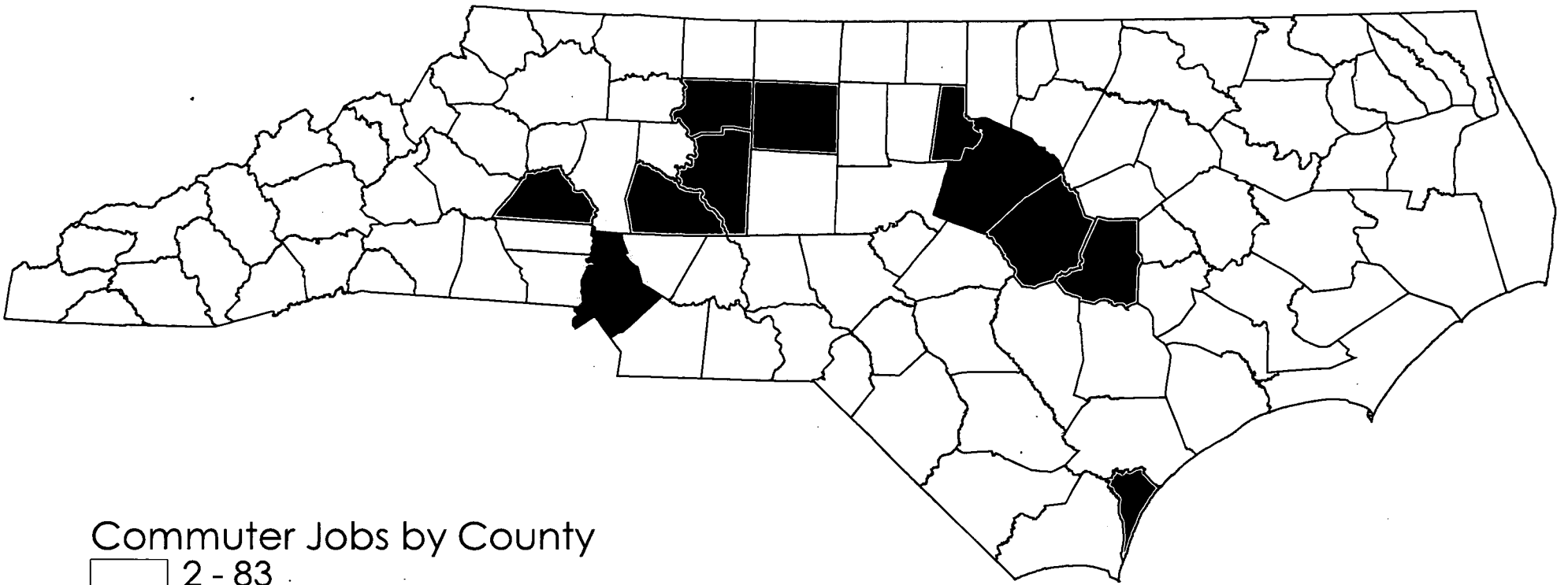
POLICY & RESEARCH
Strategic Planning
A Division of the North Carolina Department of Commerce

Map prepared June, 2006

NC Department of Commerce

DRAFT

Job Development Investment Grant Funds
Commuter Jobs Created by County



Commuter Jobs by County

- 2 - 83
- 84 - 263
- 264 - 615
- 616 - 1,225
- 1,226 - 2,131

POLICY & RESEARCH
Strategic Planning
A Division of

Map prepared June 2006.

Michael F. Easley, Governor

James T. Fain III, Secretary

North Carolina Department of Commerce

SUMMARY OF JOB DEVELOPMENT INVESTMENT GRANT ANNOUNCEMENTS

Forty-one Grants Bring 14,700 Jobs to North Carolina

The Job Development Investment Grant initiative, proposed by Gov. Mike Easley and the N.C. Economic Development Board, awards up to 25 grants annually to strategically important, new and expanding businesses and industrial projects. These grants are only awarded to projects whose benefits exceed their costs to the state and which would not locate in North Carolina without the grant. Cumulative annual grant amounts are capped at $15 million.

Since the first grant was awarded in May 2003, a total of 41 Job Development Investment Grants have been announced (six in 2003; 19 in 2004; nine in 2005; and seven in 2006). The JDIG program is proving effective in recruiting companies to North Carolina and has enabled the N.C. Department of Commerce to secure 14,741 jobs and approximately $2 billion in investment to our state. To date, JDIG awards made in [illegible]an counties are projected to generate up to $51.86 million to the Industrial Development Fund to be used for [illegible]l economic development projects. A summary of the announced grants follows.

JDIG Announcements through June 1, 2006:

(41) *5-12-06* – **Lotus Engineering** plans to open a research and development facility at the proposed Advanced Vehicle Research Center (AVRC) in Northampton County, creating 108 jobs during the next two years and investing $1.5 million. Lotus Engineering is an automotive engineering consultant company based in the United Kingdom. If the company creates the jobs called for under the agreement and sustains them for nine years, the company could receive a maximum benefit of $1.49 million.

(40) *5-11-06* – **Maersk Inc.**, the U.S.-based subsidiary of A.P. Moller-Maersk, will add 254 jobs during the next five years and invest $60 million to relocate its current Charlotte offices to an expanded facility. The company currently leases space for its regional offices in the South Park area of Charlotte. The facility supports the headquarters for several Maersk Inc. business units, including APM Terminal North America, Bridge Terminal Transport and Maersk Equipment Service Company as well as elements of Maersk Line and Maersk Logistics. Maersk Inc. plans to acquire the Royal Sun Alliance Building at 9300 Arrow Point Blvd in June 2006. This property consists of approximately 40 acres of land and 345,000 square feet of office space, which when completed, should accommodate up to 1300 employees. If the company creates the jobs called for under the agreement and sustains them for 11 years, the agreement could yield as much as $3.6 million in benefits to the company and nearly $1.2 million to the state's Industrial Development Fund.

North Carolina Department of Commerce
301 N. Wilmington St., Raleigh, NC 27601
919-733-7651, 733-8356 fax

(39) **4-18-06 – Credit Suisse** (formally known as Credit Suisse First Boston) a world-leading financial services firm, will add 400 jobs during the next two years and invest $40 million to expand its Research Triangle Park "Center of Excellence" facility. The "Center of Excellence" houses support staff for the company's investment banking division, including operations and information technology personnel. This is the second JDIG grant for the company -- the first award came in 2004. If the company creates the jobs called for under the agreement and sustains them for 10 years, the agreement could yield as much as $12.7 million in maximum benefits to the company and $4.2 million for rural infrastructure improvements through the state's Industrial Development Fund.

(38) **3-06-06 - RFMD** (formerly known as RF Micro Devices), a Greensboro-based leader in wireless technology will add 300 jobs during the next three years and invest $80 million to expand its Greensboro facility. If RFMD creates the jobs and investment and retains the workers for the 11-year period of the grant, the company could receive a maximum benefit of $4.9 million. In addition, the grant will provide up to $1.64 million in rural infrastructure improvements through the state's Industrial Development Fund.

(37) **2-15-2006 -** Global packaging company **MeadWestvaco Corporation** will establish a new Packaging Innovation Center on N.C. State University's Centennial Campus in Raleigh. The new center, which will centralize the company's research and development, engineering and other technology-focused functions, will create 200 jobs and an investment of $14 million during the next four years. If MeadWestvaco creates the jobs and investment and retains the workers for the 10-year period of the grant, the company could receive a maximum benefit of $5.19 million. In addition, the grant will provide up to $1.72 million in rural infrastructure improvements through the state's Industrial Development Fund.

(36) **2-10-2006- PGT Industries Inc.,** a manufacturer of hurricane resistant doors and windows, will open a manufacturing plant in Rowan County, creating 712 jobs and an investment of $31 million over the next five years. The company will move into a Salisbury plant being vacated by GDX Automotive that will result in the loss of 700 full- and part-time jobs. If PGT creates the jobs and investment and retains the workers for the 10-year grant period, the company could receive a maximum benefit of $5.35 million.

(35) **1-11-06 – August C. Stiefel Research Institute (SRI)**, a wholly-owned subsidiary of global pharmaceutical leader Stiefel Laboratories Inc., will create 200 jobs and invest more than $50 million in the Research Triangle Park over the next five years as it relocates its headquarters from New York to Durham County. Stiefel Laboratories, which has its world headquarters in Coral Gables, Fla., employs nearly 2,800 people worldwide and specializes in the research, development and manufacture of prescription and over-the-counter skin care products to treat acne, psoriasis and other conditions. The SRI facility in Durham County will conduct research and development in support of the company's worldwide initiatives. If Stiefel creates the jobs and investment called for in the grant agreement and sustains them for 9 years, the company could reap a maximum benefit of $3 million. In addition, the grant will provide up to $1 million in rural infrastructure funds.

(34) **12-22-05 – Andrew Corporation** - a global designer, manufacturer and supplier of communications equipment and services, will move into a new facility in Wayne County in 2006 adding 204 new jobs and retaining and relocating 232 existing jobs from the company's Smithfield facility. The project represents an investment by Andrew of $11.5 million over six years. Andrew Corporation is an Illinois-based, S&P 500 company that bought selected assets of Channel Master LLC, out of bankruptcy in 2003, including Channel Master's Johnston County plant, which is under the control of a bankruptcy judge and is scheduled to close next year. If Andrew creates the jobs and investment called for in the grant agreement and sustains them for 10 years, the company could reap a maximum benefit of $1.4 million.

(33) **12-14-05 – Hewitt Associates LLC** - Hewitt Associates, the world's largest provider of human resources outsourcing and consulting services, will expand in Charlotte, creating 900 jobs and investing $8 million over the next four years. Hewitt Associates consults with more than 2,300 companies and administers human resources, health care, payroll and retirement programs to millions of employees and retirees worldwide. The company currently employs approximately 22,000 workers in 35 countries. If the company creates the jobs and investment called for in the grant agreement and sustains them for 10 years, Hewitt could reap a maximum yield of $8 million.

(32) **10-27-05 – Smiths Aerospace Components Inc.** - Smiths Aerospace Components Inc., the largest European-based aerospace equipment company, will invest $44 million to build and equip a plant in West Jefferson in Ashe County to produce turbine engine components. The facility, which will employ 305 workers within five years, will be the company's second in North Carolina. Smiths Aerospace currently operates a similar plant in Asheville with 295 employees. If the company creates the jobs and investment called for in the agreement and sustains them for 12 years, Smiths could receive a maximum benefit from the grant of $2.4 million. *

(31) **10-27-05 – Lenovo (United States) Inc.** -Personal computer manufacturer Lenovo (United States) Inc. will invest $84 million to build a research and development center in Morrisville, creating 400 jobs during the next five years. The new jobs will bring Lenovo's total North Carolina workforce to more than 2,200 people. If the company creates the jobs and investment called for in the agreement and sustains them for 11 years, Lenovo could receive a maximum benefit of $8.4 million.

(30) **10-25-05 – Headway Corporate Resources Inc.** -- Headway Corporate Resources, a leading human capital management company, will move its corporate headquarters and central administrative offices from New York City to Raleigh, and also will open a national recruitment center in Tarboro, creating a total of 188 full-time jobs and an investment of $4.25 million over the next five years. If the company creates the jobs and investment called for in the agreement and sustains them for 10 years, the company could receive a maximum yield of $2.6 million.

(29) **10-24-05 – American Institute of Certified Public Accountants** – The AICPA will move one of its main offices from New Jersey to Durham, creating 360 new jobs and investing $5.2 million over the next five years. The AICPA, which has its headquarters in New York City, is the national professional organization for certified public accountants. The organization provides its nearly 350,000 members with resources, information and leadership to enable them to meet the needs of employers, clients and the public. If the company creates the jobs and investment called for under the agreement and sustains them for 12 years, the maximum benefit to the institute would be $6.98 million.

(28) **9-1-05 – General Electric** – will expand its aircraft engine and nuclear energy divisions at its Wilmington facility, creating 200 jobs and an investment of $78 million over five years. The nuclear business will be relocating its inspection and field services, controls and new plants business from Memphis, Tenn., and San Jose, Calif., while the aircraft engine division will add new products lines to support both civilian and military contracts. If the company creates the jobs called for under the agreement and sustains them for 10 years, GE could receive a maximum benefit of $3.1 million.

(27) **8-22-05 – Cobia Boats** – a manufacturer specializing in off-shore, saltwater fishing boats, Cobia will open a production facility in McDowell County, creating 292 jobs and an investment of $5.5 million over the next five years. The company is owned by Scott Deal, who also owns a controlling interest in Maverick Boats LLC, a company headquartered in Fort Pierce, Fla., that specializes in freshwater fishing crafts. If the company creates the jobs called for under the agreement and sustains them for 10 years, the agreement could yield a maximum benefit to the company of $2.36 million.

(26) **8-15-05 – GlaxoSmithKline** – the second largest pharmaceutical company in the world, will expand its Zebulon facility, creating 200 jobs and an investment of $92 million over the next four years. The expansion will allow the U.K.-based company to add new production lines at the Wake County facility. If the company creates the jobs called for under the agreement and sustains them for 12 years, the agreement could yield a maximum benefit to the company of $1.46 million.

(25) **6-20-05 – Prairie Packaging (awarded in 2004; announced 2005)** – a maker of foam and plastic disposable dinnerware products is building a 700,000-square-foot manufacturing plant and distribution center in Huntersville (Mecklenburg Co.) creating 242 jobs and an investment of $48 million. Prairie Packaging was founded by Earl Shapiro, a former president of the Sweetheart Cup Corporation, in 1986. The company is headquartered in Bedford Park, IL, and is still controlled by the Shapiro family. The company's products are sold worldwide, and the company is a major supplier to such foodservice industry giants as Sysco Corp., McDonald's and Sam's Club. If the company creates the jobs called for under the agreement and sustains them for 10 years, the agreement could yield a maximum benefit to the company of $1.45 million.

(24) **3-7-05 –Hospira, Inc., (awarded in 2004; announced 2005)** a manufacturer of hospital products and medical devices is creating 152 new jobs over the next five years and investing $14 million. Hospira, Inc. (NYSE: HSP) is a global specialty pharmaceutical and medication delivery company created from the hospital products business of Abbott Laboratories in 2004. Headquartered in Lake Forest, Illinois, Hospira has a manufacturing facility in Rocky Mount that employs more than 2,000 people and acquired Fresenius Kabi's facility in Clayton and their 40 employees. If the company creates the jobs called for under the agreement and sustains them for 10 years, the agreement could yield $1.35 million in maximum benefits to the company.

(23) **1-26-05 –SYSCO Corporation, (awarded in 2004; announced 2005)** the largest foodservice, marketing and distribution organization plans to build a 300,000-square-foot distribution center in Selma, creating up to 600 jobs over the next seven years and investing $37 million in the area. If the company creates the jobs called for under the agreement and sustains them for 10 years, the agreement could yield $5.2 million in maximum benefits to the company.

(22) **12-22-04 – Altec Industries, Inc.** is locating a manufacturing facility in Burnsville, bringing 300 new jobs over the next five years and investing more than $7.5 million. Altec Industries is a leading manufacture of mobile equipment such as aerial lifts, digger derricks and specialty equipment for the electric utility, telecommunications and tree care industries. If the company creates the jobs called for under the agreement and sustains them for 11 years, the agreement could yield $1.9 million in maximum benefits to the company.

(21) **11-9-04 – Dell, Inc.,** will build a computer manufacturing facility in the Piedmont Triad, creating 1,500 jobs and investing $100 million. Employment by other strategic partners located at the facility will bring the total number of jobs up to 2,000. The project is expected to have a $24.5 billion impact on the state's economy over the next 20 years and bring an estimated $743 million in net revenue to the state. Dell, Inc., a leading manufacturer and distributor of computers and related products, plans to build and equip a state-of-the-art, 400,000-square-foot manufacturing and distribution facility in the Piedmont Triad. If the company creates the jobs called for under the JDIG agreement and sustains them for 12 years, the agreement could yield $14.1 million in maximum benefits to the company. Additionally, nearly $4.7 million will go to the state's Industrial Development Fund for infrastructure improvements in rural North Carolina.

(20) **10-29-04 -- GETRAG Corporation,** one of the world's leading manufacturers of power-train technology for the automotive industry, will expand its presence in Maiden (Catawba County), creating 302 new jobs and investing $81 million. GETRAG Corporation manufactures axles, gears and transmissions for foreign and domestic automotive companies. They currently employ 368 people in Maiden and plan to hire an additional 302 employees over a four-year period beginning in 2005. If the company creates the jobs called for under the agreement and sustains them for 11 years, the agreement could yield $2.5 million in maximum benefits to the company. Additionally, nearly $830,000 will go to the state's Industrial Development Fund for infrastructure improvements in rural North Carolina.

(19) **10-28-04 -- Novo Nordisk,** a world leader in diabetes care, will expand in Clayton, creating 187 new jobs and $100 million investment. With headquarters in Denmark, Novo Nordisk employs about 19,600 people full-time in 69 countries and markets its products in 179 countries. If the company creates the jobs called for under the JDIG agreement and sustains them for 10 years, the agreement could yield $2.3 million in maximum benefits to the company. An additional $758,000 will go to the state's Industrial Development Fund for infrastructure improvements in rural North Carolina.

(18) **10-21-04 – Credit Suisse First Boston** will locate a Global Business Center in the Triangle, creating 400 jobs and investing more than $100 million. Headquartered in New York with more than 18,000 employees worldwide, CSFB is a leading global investment bank serving institutional, corporate, government and individual clients. The JDIG award could yield a maximum of $8.9 million for the company if it creates the jobs called for under the agreement and sustains them for 10 years. Additionally, $2.9 million will go to the state's Industrial Development Fund for infrastructure improvements in rural North Carolina.

(17) **10-06-04—PCB Piezotronics, Inc.** will locate a new manufacturing facility in Roanoke Rapids, bringing 250 new jobs and about $5 million in additional investment to the area. PCB Piezotronics is one of the world's leaders in the design, development and manufacture of laboratory and industrial grade sensors. If the company creates the jobs called for under the agreement and sustains them for 10 years, the agreement could yield $1.6 million in maximum benefits to the company.

North Carolina Department of Commerce
301 N. Wilmington St., Raleigh, NC 27601
919-733-7651, 733-8356 fax

(16) **8-10-04—Cree, Inc.** will expand its semiconductor production in the Triangle, bringing 300 new jobs and approximately $300 million in additional investment. Cree is one of the world's leaders in the development and manufacturing of semiconductor materials. Developed from technology learned at N.C. State University, Cree is a homegrown success story. If the company creates the jobs called for under the agreement and sustains them for 11 years, the agreement could yield $5.1 million in maximum benefits to the company. Additionally, $1.7 million will go to the state's Industrial Development Fund for infrastructure improvements in rural North Carolina.

(15) **7-27-04—Network Appliance, Inc.** will expand its operations in the Triangle, bringing 361 new jobs and $59 million in additional investment. Network Appliance, a world-leading data storage provider. If the company creates the jobs called for under the agreement and sustains them for 10 years, the agreement could yield maximum benefits to the company of as much as $8.9 million over the life of the grant. Additionally, nearly $3 million will go to the state's Industrial Development Fund for infrastructure improvements in rural North Carolina.

Grants Awarded in 2004

(14) **6-07-04—Superior Essex Inc. (SESX)** is expanding its facilities in Tarboro, creating 130 new jobs and about $9 million investment. The company manufactures and supplies copper and fiber optic communications wire and cable products to telephone companies, distributors and system integrators. If the company creates the jobs called for under the agreement and sustains them for 10 years, the agreement could yield maximum benefits to the company of as much as $930,000 over the life of the grant. Superior Essex is the first recipient of JDIG in a Tier 1 rural county. *

(13) **6-03-04—Harris Microwave Communications Division** is relocating its corporate headquarters to Durham from Silicon Valley, creating 258 new jobs and an investment of $1 million. Harris Microwave Communications Division, one of five divisions within Harris Corporation (NYSE: HRS) is the largest supplier of microwave systems in North America and a leading supplier worldwide. If the company creates the jobs called for under the agreement and sustains them for 10 years, the agreement could yield maximum benefits to the company of as much as $4 million over the life of the grant. Additionally, $1.3 million will go to the state's Industrial Development Fund for infrastructure improvements in rural North Carolina.

(12) **4-06-04 –Merck & Co., Inc.**, a global research-driven pharmaceutical products company, will locate its new vaccine manufacturing facility in Durham County. They are bringing approximately 200 jobs and up to $300 million in additional investment to the area. The facility will manufacture vaccine products to fight measles, mumps, rubella and chicken pox. This will be the first vaccine manufacturing facility for Merck outside of its vaccine division headquarters in West Point, PA. If the company creates the jobs called for under the agreement and sustains them for 12 years, the agreement could yield maximum benefits to the company of $4.1 million over the life of the grant. Additionally, nearly $1.4 million will go to the state's Industrial Development Fund for infrastructure improvements in rural North Carolina.

(11) **3-26-04—Time Warner Cable**, the second largest operator of cable systems in the United States has chosen Charlotte to expand their corporate support offices. They are bringing 350 new jobs and up to $36 million in additional investment to the area. If the company creates the jobs called for under the agreement and sustains them for 10 years, the agreement could yield maximum benefits to the company of as much as $4.2 million over the life of the grant with an additional $1.4 million going to the state's Industrial Development Fund for infrastructure improvements in rural North Carolina.

(10) **3-18-04 – ZF Lemforder Corporation**, an automotive component manufacturing and supply company, is bringing 200 new jobs and up to $28.8 million in additional investment to Catawba County. If the company creates the jobs called for under the agreement and sustains them for 10 years, the agreement could yield maximum benefits to the company of as much as $1.7 million over the life of the grant with an additional $560,000 going to the state's Industrial Development Fund for infrastructure improvements in rural North Carolina.

(9) **3-16-04—Unilin**, a manufacturer of superior quality glueless laminate flooring known as Quick-Step, will expand its operations in Davidson County, bringing 330 jobs and up to $80 million in additional investment to the area. The agreement could yield maximum benefits to the company of as much as $2 million over the life of the grant and contribute nearly $654,000 to the state's Industrial Development Fund for infrastructure improvements in rural North Carolina.

(8) **3-15-04 – Verizon Wireless**, one of the nation's leading providers of wireless communications, will create up to 1,211 jobs and invest up to $29 million to the Wilmington area. If the company creates the jobs called for under the agreement and sustains them for 10 years, the agreement could yield maximum benefits to the company of as much as $7.2 million over the life of the grant with an additional $2.4 million going to the state's Industrial Development Fund for infrastructure improvements in rural North Carolina.

(7) **3-01-04—Citi Cards**, a division of Citigroup, the preeminent global financial services company, will create 900 jobs and invest $35 million in Guilford County. If the company creates all the jobs called for under the agreement and sustains them for all grant years, the JDIG could yield maximum benefits to the company of $5.2 million with an additional $1.7 million going to the state's Industrial Development Fund for infrastructure improvements in rural North Carolina.

Grants Awarded in 2003:

(6) **11-17-03—A.F.G. Wipes**, headquartered in Israel, will locate its first U.S. operation in Reidsville, NC (Rockingham County), creating 200 jobs and $25 million in investment in a facility that will manufacture non-woven wet wipes for baby, skin care, household and health care industries. If the company creates all of the jobs called for under the agreement and sustains them for 10 years, the agreement could yield maximum benefits to the company of as much as $1.6 million over the life of the grant.

North Carolina Department of Commerce
301 N. Wilmington St., Raleigh, NC 27601
919-733-7651, 733-8356 fax

(5) **10-30-03—GE Nuclear Energy** is relocating its global headquarters to Wilmington, a move that will create 200 jobs with an investment of roughly $4 million. Estimated total compensation for the new positions will average $100,000 a year. If the company creates all of the jobs called for under the agreement and sustains them for all grant years, the agreement could yield maximum benefits to the company of as much as $5.9 million over the life of the nine-year grant. This grant could contribute nearly $2 million to the state's Industrial Development Fund for infrastructure improvements in rural North Carolina.

(4) **10-28-03—Goodrich Corporation**, global aerospace and defense systems supplier, will add 300 new jobs to their facility in Monroe, NC and an investment of nearly $11 million. The company will add 150 new jobs by next year and expects to add another 150 within five years. The jobs will have average salaries of $15-$18 an hour. If the company creates all of the jobs called for under the agreement and sustains them for 10 years, the agreement could yield maximum benefits to the company of as much as $2.7 million over the life of the grant and could contribute approximately $1.1 million to the state's Industrial Development Fund for infrastructure improvements in rural North Carolina.

(3) **7-28-03—General Dynamics Armament and Technical Products, Inc.** (GDATP) is relocating their headquarters and light manufacturing operation to North Carolina, a move that will create 405 jobs with a $30 million investment. If GDATP, which designs, develops and manufactures aerospace and defense products, creates all of the jobs called for under the agreement and sustains them for 10 years, the agreement could yield maximum benefits to the company of as much as $5.9 million over the life of the grant. This grant could contribute approximately $2 million to the state's Industrial Development Fund for infrastructure improvements in rural North Carolina.

(2) **7-23-03—R.H. Donnelley Corporation (NYSE: RHD)** will relocate its corporate headquarters to North Carolina, a move that will create 275 jobs over three years. R.H. Donnelley is the largest public, U.S., stand-alone publisher of yellow pages directories. If the company creates all of the jobs called for under the agreement and sustains them for 10 years, the agreement could yield maximum benefits to the company of as much as $4.3 million over the life of the grant. Because the grant will be awarded in an urban county, a portion of the total grant, amounting to as much as $1.4 million, will be set aside in the state's Industrial Development Fund for infrastructure improvements in rural North Carolina.

(1) **5-14-03—Infineon Technologies North America Corporation**, the initial recipient of the new state job-development grant program, create as many as 400 new jobs over five years with estimated salaries for the new positions averaging over $75,000, as well as an initial investment of at least $8 million over two years in corporate facilities in Cary. If the company creates all of the jobs called for under the agreement and sustains them for 11 years, the agreement could yield maximum benefits to the company of as much as $9.5 million over the life of the grant. The grant could also provide up to $3.2 million for infrastructure improvements in rural North Carolina.

# # #

North Carolina Department of Commerce
301 N. Wilmington St., Raleigh, NC 27601
919-733-7651, 733-8356 fax

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☐ Committee Substitute for

HB 2744 A BILL TO BE ENTITLED AN ACT TO MAKE MODIFICATIONS TO THE JOB DEVELOPMENT INVESTMENT GRANT PROGRAM, TO EXTEND THE WILLIAM S. LEE QUALITY JOBS AND BUSINESS EXPANSION ACT FOR CERTAIN TAXPAYERS, AND TO EXTEND CERTAIN SALES AND USE TAX REFUNDS.

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill, and recommendation that the committee substitute bill be re-referred to the Committee on APPROPRIATIONS.

(FOR JOURNAL USE ONLY)

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

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

North Carolina General Assembly

House Committee on Finance

Minutes

~

July 6, 2006

The House Committee on Finance met on Thursday, July 6, 2006 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Alexander, Gibson, Howard, Luebke, McComas, and Wainwright; Vice-Chairs Daughtridge, Hill, Ross, Weiss, and Womble; and Representatives B. Allen, Blackwood, Bordsen, Capps, Carney, Faison, Fisher, Folwell, Glazier, Goforth, Hackney, Holliman, Insko, Lewis, Lucas, McGee, Rayfield, Underhill, Walend, and Wiley. Also present were Sergeant-at-Arms Mark Cone, Will Heath, Fred Hines, and Dusty Rhodes. Staff persons present included Cindy Avrette, Rodney Bizzell, David Crotts, Brenna Erford, Dan Ettefagh, Linda Millsaps, and Martha Walston. The Agenda and Visitor Registration Sheets are attached and incorporated into these minutes as **attachments 1 and 2**.

Chairman Gibson called the meeting to order at 8:38 am and recognized the seven (7) pages present: (1) Christine Abernathy of Mecklenburg County, sponsored by Representative Carney; (2) Banks Summers of Wake County, sponsored by Speaker Black; (3) Stancell Haigwood of Pitt County, sponsored by Representative McLawhorn; (4) Deanna Stolp of Wake County, sponsored by Speaker Black; (5) Chelsea Phillips of Mecklenburg County, sponsored by Representative Saunders; (6) Kathryn Penry of Wake County, sponsored by Representative Weiss; and (7) Michael Ghio of Orange County, sponsored by Representative Insko.

The first bill considered by the Committee was **SB 1373 – ELIMINATE FEE FOR LEGION OF VALOR PLATE** (see **attachment 3**). Chairman Gibson first recognized Representative Howard who moved for the adoption of the proposed committee substitute (PCS) for the Committee's consideration. The motion was adopted. Senator Rand was then recognized and explained that the PCS would eliminate the $28 vehicle registration fee and the $10 special registration plate fee for recipients of the Legion of Valor special registration plate. This bill also incorporates the authorization for eight additional special license plate provisions earlier passed by the House in House Bill 1993. Following the explanation, Representative Carney moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. Seeing no further discussion, Chairman Gibson called the motion to a vote and it carried.

Chairman Gibson then recognized Representative Howard who moved to adopt the proposed committee substitute (PCS) for **HB 749 – AGREEMENT FOR TRANSPORTATION IMPROVEMENTS** (see **attachment 4**) for consideration. The motion carried. Representative Cole was then recognized and explained that the PCS authorizes the North Carolina Board of Transportation to approve partnership agreements with private entities and authorized political subdivisions in order to finance the construction of a turnpike project using federal funds. Representative Holliman was then recognized following the explanation and moved

for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. As there was no further debate, Chairman Gibson called the motion to a vote and it carried without objection.

The next bill considered by the Committee was **SB 1862 – LIMIT NUTRIENT OFFSET PAYMENTS** (see **attachment 5**). Chairman Gibson first recognized Representative Hill who moved to adopt the proposed committee substitute (PCS) for the Committee's consideration. The motion was adopted. Senator Stevens was recognized to explain the PCS. He stated that this bill changes the offset fee back to the eleven dollar ($11) per pound of nitrogen per year level set back in 1998. The bill also directs the Environmental Review Commission to study issues related to nutrient offset payments and report to the 2007 General Assembly in January. Representative Luebke was recognized and pointed out that the fee change that occurred back in March of this year was a result of the eleven dollar fee not being adequate. He then urged the Committee to select an amount that provides adequate funding for the Nutrient Offset Fee Program. Chairman Gibson then recognized Representative Weiss who asked for an explanation of the fee changing process. Robin Smith, Assistant Secretary of the Department of Environment and Natural Resources (DENR), was recognized and gave an outline of the fee changing process. Representative Weiss was then recognized for a follow-up question on the time length of the fee changing process. Mrs. Smith responded saying that the process took between six and eight months.

Chairman Gibson then recognized Representative Glazier who commented that legislators should be given the administrative record before overruling a decision made by the Environmental Review Commission. Representative Howard then asked about the time estimate before the study would be reported to the General Assembly. In response, Senator Stevens stated that the study would be reported back at the beginning of the 2007 session. Chairman Gibson then recognized Representative Luebke who sent forth an amendment (see **attachment 6**) and explained that the department would be able to handle buffer projects at the eleven dollar fee level but would not be able to handle non-buffer projects. He continued saying that this PCS would authorize the department to only complete buffer projects else perform services without adequate funding. Representative Luebke then moved for the amendment's adoption. Representative Blackwood was then recognized and asked if the Nutrient Offset Fee Program has worked well up to this point. Senator Stevens, in response, stated that the program has worked well up to this point and DENR has enough funding in fund balance to continue buffer projects for the next twelve (12) to eighteen (18) months. Representative Wainwright was then recognized and urged the Committee to oppose the amendment. Seeing no further discussion, Chairman Gibson called the motion to a vote and, with division being called, the amendment failed with 6 ayes and 18 nays.

Representative Weiss was then recognized and sent forth an amendment (see **attachment 7**) that sets the nutrient offset fee to thirty-five dollars ($35) instead of eleven dollars ($11). Chairman Gibson then recognized Representative Wainwright who stated that the thirty-five dollar ($35) figure is no better than any other figure and he then urged the Committee to not support the bill. Representative Weiss then moved for the adoption of her amendment. As there was no further debate, Chairman Gibson called the motion to a vote and the amendment failed. Following the vote, Representative Luebke then commented that he was very disappointed that not enough information had been provided to the Committee. Representative Hill was recognized and urged the Committee to support the PCS. Representative Ross expressed her displeasure of the bill as she believes that the bill is just a way for developers not lose as much money. Representative Howard was then recognized and moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. Seeing no further discussion, Chairman Gibson called the motion to a vote and, with division being called, the proposed committee substitute was approved by a vote of 17 ayes and 9 nays.

Chairman Gibson then recognized Senator Bingham to explain **SB 2012 – SUTA MODIFICATIONS** (see **attachment 8**). Senator Bingham stated that the bill would relieve a successor employer of the higher unemployment contribution rate of its predecessor when there is no common ownership of the two employers and the successor acquired the assets of the predecessor in a sale of bankruptcy. Following the explanation, Representative Faison stated that he would prefer to have stronger exemption language on page 2, line 21. He then sent forth an amendment (see **attachment 9**) that changes the word "does" to "shall" on page 2, line 21 of the bill. Chairman Gibson then recognized David Clegg of the Employment Security Commission who stated that they would support the amendment. Seeing no further discussion on the amendment, Chairman Gibson called the amendment to a vote and it was adopted. Representative Wainwright was then recognized and moved that Senate Bill 2012 be given a favorable report, as amended. As there was no further debate, Chairman Gibson called the motion to a vote and it carried by consent.

The final bill considered by the Committee was **HB 2873 – SAFE DRINKING WATER/PRIVATE WELLS** (see **attachment 10**). Representative Fisher was recognized and moved for the adoption of the proposed committee substitute (PCS) for consideration by the Committee. The motion carried. To explain the bill, Chairman Gibson recognized Representative Inkso who stated that the bill established new water quality testing requirements for new private drinking water wells in North Carolina. Representative Insko explained that the water testing fee was created by a previous bill that accompanied the passage of the budget. This PCS creates the framework for the new water quality testing requirement to be implemented. Following the explanation, Representative Wainwright asked if the new fee created by this bill would be assessed per well or per household using a well. In response, Representative Insko stated that one fee would be assessed per well, no matter how many households were served by the well. Chairman Gibson then recognized Representative Luebke who expressed his support for the PCS and urged fellow Committee members to do likewise. Representative Blackwood asked when a permit would be required for repair work on wells. Robin Smith, Assistant Secretary of the Department of Environment and Natural Resources, stated that repairs requiring permits are only repairs to wells where the seal to the well has been broken. Representative Howard then stated that she was worried that this bill could add more costs to local governments. Chairman Gibson then recognized Paul Meyer from the North Carolina Association of County Commissioners who spoke and said that they support the bill since funding would come from fees assessed by local governments. Representative Womble was then recognized and moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. Seeing no further discussion, Chairman Gibson called the motion to a vote and it carried without objection.

Having no further business before the Committee, Chairman Gibson then adjourned the meeting at 10:01 am.

Respectfully submitted,

Representative Pryor Gibson
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:

1. Agenda
2. Visitor Registration Sheets
3. Senate Bill 1373 (and related materials)

4. House Bill 749 (and related materials)
5. Senate Bill 1862 (and related materials)
6. Luebke Amendment on SB 1862 – **FAILED**
7. Weiss Amendment on SB 1862 - **FAILED**
8. Senate Bill 2012 (and related materials)
9. Faison Amendment on SB 2012 - **ADOPTED**
10. House Bill 2873 (and related materials)
11. House Bill 1895 (and related materials) – (NOT DISCUSSED)

North Carolina General Assembly

House Committee on Finance

Minutes

~

July 6, 2006

The House Committee on Finance met on Thursday, July 6, 2006 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Alexander, Gibson, Howard, Luebke, McComas, and Wainwright; Vice-Chairs Daughtridge, Hill, Ross, Weiss, and Womble; and Representatives B. Allen, Blackwood, Bordsen, Capps, Carney, Faison, Fisher, Folwell, Glazier, Goforth, Hackney, Holliman, Insko, Lewis, Lucas, McGee, Rayfield, Underhill, Walend, and Wiley. Also present were Sergeant-at-Arms Mark Cone, Will Heath, Fred Hines, and Dusty Rhodes. Staff persons present included Cindy Avrette, Rodney Bizzell, David Crotts, Brenna Erford, Dan Ettefagh, Linda Millsaps, and Martha Walston. The Agenda and Visitor Registration Sheets are attached and incorporated into these minutes as **attachments 1 and 2**.

Chairman Gibson called the meeting to order at 8:38 am and recognized the seven (7) pages present: (1) Christine Abernathy of Mecklenburg County, sponsored by Representative Carney; (2) Banks Summers of Wake County, sponsored by Speaker Black; (3) Stancell Haigwood of Pitt County, sponsored by Representative McLawhorn; (4) Deanna Stolp of Wake County, sponsored by Speaker Black; (5) Chelsea Phillips of Mecklenburg County, sponsored by Representative Saunders; (6) Kathryn Penry of Wake County, sponsored by Representative Weiss; and (7) Michael Ghio of Orange County, sponsored by Representative Insko.

The first bill considered by the Committee was **SB 1373 – ELIMINATE FEE FOR LEGION OF VALOR PLATE** (see **attachment 3**). Chairman Gibson first recognized Representative Howard who moved for the adoption of the proposed committee substitute (PCS) for the Committee's consideration. The motion was adopted. Senator Rand was then recognized and explained that the PCS would eliminate the $28 vehicle registration fee and the $10 special registration plate fee for recipients of the Legion of Valor special registration plate. This bill also incorporates the authorization for eight additional special license plate provisions earlier passed by the House in House Bill 1993. Following the explanation, Representative Carney moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. Seeing no further discussion, Chairman Gibson called the motion to a vote and it carried.

Chairman Gibson then recognized Representative Howard who moved to adopt the proposed committee substitute (PCS) for **HB 749 – AGREEMENT FOR TRANSPORTATION IMPROVEMENTS** (see **attachment 4**) for consideration. The motion carried. Representative Cole was then recognized and explained that the PCS authorizes the North Carolina Board of Transportation to approve partnership agreements with private entities and authorized political subdivisions in order to finance the construction of a turnpike project using federal funds. Representative Holliman was then recognized following the explanation and moved

for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. As there was no further debate, Chairman Gibson called the motion to a vote and it carried without objection.

The next bill considered by the Committee was **SB 1862 – LIMIT NUTRIENT OFFSET PAYMENTS** (see **attachment 5**). Chairman Gibson first recognized Representative Hill who moved to adopt the proposed committee substitute (PCS) for the Committee's consideration. The motion was adopted. Senator Stevens was recognized to explain the PCS. He stated that this bill changes the offset fee back to the eleven dollar ($11) per pound of nitrogen per year level set back in 1998. The bill also directs the Environmental Review Commission to study issues related to nutrient offset payments and report to the 2007 General Assembly in January. Representative Luebke was recognized and pointed out that the fee change that occurred back in March of this year was a result of the eleven dollar fee not being adequate. He then urged the Committee to select an amount that provides adequate funding for the Nutrient Offset Fee Program. Chairman Gibson then recognized Representative Weiss who asked for an explanation of the fee changing process. Robin Smith, Assistant Secretary of the Department of Environment and Natural Resources (DENR), was recognized and gave an outline of the fee changing process. Representative Weiss was then recognized for a follow-up question on the time length of the fee changing process. Mrs. Smith responded saying that the process took between six and eight months.

Chairman Gibson then recognized Representative Glazier who commented that legislators should be given the administrative record before overruling a decision made by the Environmental Review Commission. Representative Howard then asked about the time estimate before the study would be reported to the General Assembly. In response, Senator Stevens stated that the study would be reported back at the beginning of the 2007 session. Chairman Gibson then recognized Representative Luebke who sent forth an amendment (see **attachment 6**) and explained that the department would be able to handle buffer projects at the eleven dollar fee level but would not be able to handle non-buffer projects. He continued saying that this PCS would authorize the department to only complete buffer projects else perform services without adequate funding. Representative Luebke then moved for the amendment's adoption. Representative Blackwood was then recognized and asked if the Nutrient Offset Fee Program has worked well up to this point. Senator Stevens, in response, stated that the program has worked well up to this point and DENR has enough funding in fund balance to continue buffer projects for the next twelve (12) to eighteen (18) months. Representative Wainwright was then recognized and urged the Committee to oppose the amendment. Seeing no further discussion, Chairman Gibson called the motion to a vote and, with division being called, the amendment failed with 6 ayes and 18 nays.

Representative Weiss was then recognized and sent forth an amendment (see **attachment 7**) that sets the nutrient offset fee to thirty-five dollars ($35) instead of eleven dollars ($11). Chairman Gibson then recognized Representative Wainwright who stated that the thirty-five dollar ($35) figure is no better than any other figure and he then urged the Committee to not support the bill. Representative Weiss then moved for the adoption of her amendment. As there was no further debate, Chairman Gibson called the motion to a vote and the amendment failed. Following the vote, Representative Luebke then commented that he was very disappointed that not enough information had been provided to the Committee. Representative Hill was recognized and urged the Committee to support the PCS. Representative Ross expressed her displeasure of the bill as she believes that the bill is just a way for developers not lose as much money. Representative Howard was then recognized and moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. Seeing no further discussion, Chairman Gibson called the motion to a vote and, with division being called, the proposed committee substitute was approved by a vote of 17 ayes and 9 nays.

Chairman Gibson then recognized Senator Bingham to explain **SB 2012 – SUTA MODIFICATIONS** (see **attachment 8**). Senator Bingham stated that the bill would relieve a successor employer of the higher unemployment contribution rate of its predecessor when there is no common ownership of the two employers and the successor acquired the assets of the predecessor in a sale of bankruptcy. Following the explanation, Representative Faison stated that he would prefer to have stronger exemption language on page 2, line 21. He then sent forth an amendment (see **attachment 9**) that changes the word "does" to "shall" on page 2, line 21 of the bill. Chairman Gibson then recognized David Clegg of the Employment Security Commission who stated that they would support the amendment. Seeing no further discussion on the amendment, Chairman Gibson called the amendment to a vote and it was adopted. Representative Wainwright was then recognized and moved that Senate Bill 2012 be given a favorable report, as amended. As there was no further debate, Chairman Gibson called the motion to a vote and it carried by consent.

The final bill considered by the Committee was **HB 2873 – SAFE DRINKING WATER/PRIVATE WELLS** (see **attachment 10**). Representative Fisher was recognized and moved for the adoption of the proposed committee substitute (PCS) for consideration by the Committee. The motion carried. To explain the bill, Chairman Gibson recognized Representative Inkso who stated that the bill established new water quality testing requirements for new private drinking water wells in North Carolina. Representative Insko explained that the water testing fee was created by a previous bill that accompanied the passage of the budget. This PCS creates the framework for the new water quality testing requirement to be implemented. Following the explanation, Representative Wainwright asked if the new fee created by this bill would be assessed per well or per household using a well. In response, Representative Insko stated that one fee would be assessed per well, no matter how many households were served by the well. Chairman Gibson then recognized Representative Luebke who expressed his support for the PCS and urged fellow Committee members to do likewise. Representative Blackwood asked when a permit would be required for repair work on wells. Robin Smith, Assistant Secretary of the Department of Environment and Natural Resources, stated that repairs requiring permits are only repairs to wells where the seal to the well has been broken. Representative Howard then stated that she was worried that this bill could add more costs to local governments. Chairman Gibson then recognized Paul Meyer from the North Carolina Association of County Commissioners who spoke and said that they support the bill since funding would come from fees assessed by local governments. Representative Womble was then recognized and moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. Seeing no further discussion, Chairman Gibson called the motion to a vote and it carried without objection.

Having no further business before the Committee, Chairman Gibson then adjourned the meeting at 10:01 am.

Respectfully submitted,

Representative Pryor Gibson
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:
1. Agenda
2. Visitor Registration Sheets
3. Senate Bill 1373 (and related materials)

4. House Bill 749 (and related materials)
5. Senate Bill 1862 (and related materials)
6. Luebke Amendment on SB 1862 – **FAILED**
7. Weiss Amendment on SB 1862 - **FAILED**
8. Senate Bill 2012 (and related materials)
9. Faison Amendment on SB 2012 - **ADOPTED**
10. House Bill 2873 (and related materials)
11. House Bill 1895 (and related materials) – (NOT DISCUSSED)

ATTACHMENT 1

AGENDA

House Finance Committee

Thursday, July 6, 2006
8:30 a.m.
Room 544 LOB
Chaired by: Rep. Gibson

Co-Chairs

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

Call to Order

Introduction of Pages

Bills:

HB 749	**AGREEMENT FOR TRANSPORTATION IMPROVEMENTS.-AB**	*Reps. Cole & Coates*
HB 1895	**ESTABLISH HIGH-RISK POOL**	*Reps. Insko, England, Nye, & Wright*
HB 2873	**SAFE DRINKING WATER/PRIVATE WELLS**	*Reps. Insko & L. Allen*
SB 1373	**ELIMINATE FEE FOR LEGION OF VALOR PLATE**	*Sen. Rand*
SB 1862	**LIMIT NUTRIENT OFFSET PAYMENTS**	*Sen. Malone*
SB 2012	**SUTA MODIFICATIONS**	*Sen. Bingham*

Adjournment

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

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

DAY & DATE: **Thursday, July 6, 2006**

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

LOCATION: **Room 544, LOB**

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

HB 749 – AGREEMENT FOR TRANSPORTATION IMPROVEMENTS.-AB – Reps. Cole & Coates

HB 1895 – ESTABLISH HIGH-RISK POOL – Reps. Insko, England, Nye, & Wright

HB 2873 – SAFE DRINKING WATER/PRIVATE WELLS – Reps. Insko & L. Allen

SB 1373 – ELIMINATE FEE FOR LEGION OF VALOR PLATE – Sen. Rand

SB 1862 – LIMIT NUTRIENT OFFSET PAYMENTS – Sen. Malone

SB 2012 – SUTA MODIFICATIONS – Sen. Bingham

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

I hereby certify this notice was filed by the committee clerk at the following offices at **2:50 pm** on **July 5, 2006**:

X Principal Clerk
X Reading Clerk - House Chamber

Jason A. Cannon (Committee Clerk)

ATTACHMENT 2

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — July 6, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lydia Varn	NCACC
Jim Blackburn	NC Association of County Commissioners
Paul Meyer	NCAEC
Molly Ryan	NCSBA
John Pollard	NCCMA
DAVID BARNES	Poyner Spruill
Ken Wright	BCBS
Stephanie Dorko	Charlotte Chamber
Rick Zechini	NC Assoc. of Realtors
Tim Minton	NBA of Raleigh, Wake County
Kim Hibbard	NCLM

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — July 6, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Christine Wunsche	Environment North Carolina
[illegible]	NCATL
A Bucat	ESC
David Clegg	ESC
Cameron Contizano	Daily Bulletin
Johanna Reese	DOT
DICK HAMILTON	NCWRC
Gordon Myers	IVCWRC
Erin Kinney	NC Conservation Network
Cam Cover	BPMHC
Lisa Martin	NC Home Builders
A Lucas	DENR
Anthony Allen	NCACC

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — July 6, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tom Bean	NC ED, NCCVP

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — July 6, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Marcus Downs	NC State Health Plan
Deborah Runne	NCPNA / NCALHD
Greg Bright	Wake County Dept of Env. Services
Colleen Kachavet	Smith Moore - NCCWA
Erica Reider	CWMTF
Heather Randell	NC Sierra Club
Elizabeth Self	NC Sierra Club
Chris Valauri	NC Beer & Wine Assoc
Jim Stewart	IFNC
Robert Paschal	Young, Moore
T REEDER	DWQ

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — July 6, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Steve Wall	DENR
Robin Smith	DENR
Joseph Ponzi	Brooks Pierce
Ed Turlington	" "
Abby C. Emanuelson	NMSS
LORI ANN HARRIS	CATHO
FRANK W. FOLGER	HELMS MULLISS WICKER
Ann Hobbs	DHHS - DPH
Jennifer Bryan	Governor's Office
Lee Devlin	DHHS - Div. of Public Health
Terry Pierce	DENR Div. of Envir. Health

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — July 6, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Joan Troy	NC WRC
Andy Romanet	NCLM
John Bowdish	Astra Zeneca
Doug Anders	PFPNC
R. Paul Wilson	NCHBA

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1373
Finance Committee Substitute Adopted 6/19/06
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1373-CSRBf-73 [v.1]

7/5/2006 7:27:39 PM

Short Title: Various Special Plates. (Public)

Sponsors:

Referred to:

May 16, 2006

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE FEE FOR A BREAST CANCER AWARENESS SPECIAL PLATE TO SUPPORT SERVICES TO DETECT BREAST CANCER EARLIER; TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE THE FOLLOWING NEW SPECIAL REGISTRATION PLATES: CAROLINA'S AVIATION MUSEUM, EMT, FOX HUNTING, GOLD STAR, GREYHOUND FRIENDS OF NC, KAPPA ALPHA PSI FRATERNITY, LEUKEMIA & LYMPHOMA SOCIETY, LUNG CANCER RESEARCH, NC CHILDREN'S PROMISE, NC STATE PARKS, PRINCE HALL MASON, SUPPORT OUR TROOPS, AND US EQUINE RESCUE LEAGUE; TO ELIMINATE THE REGISTRATION PLATE FEE REQUIREMENT FOR INDIVIDUALS WHO QUALIFY FOR THE LEGION OF VALOR SPECIAL REGISTRATION PLATE; TO ADD THE DUCKS UNLIMITED SPECIAL PLATE TO THE LIST OF PLATES NOT REQUIRED TO HAVE A "FIRST IN FLIGHT" BACKGROUND; TO AUTHORIZE THE DIVISION TO ISSUE AN INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS SPECIAL PLATE TO A SURVIVING SPOUSE; AND TO REPEAL THE SUNSET ON THE HARLEY OWNERS' GROUP AND ROCKY MOUNTAIN ELK FOUNDATION SPECIAL LICENSE PLATES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-63(b) reads as rewritten:

"(b) Every license plate shall have displayed upon it the registration number assigned to the vehicle for which it is issued, the name of the State of North Carolina, which may be abbreviated, and the year number for which it is issued or the date of expiration. A plate issued for a commercial vehicle, as defined in G.S. 20-4.2(1), and weighing 26,001 pounds or more, must bear the word "commercial," unless the plate is a special registration plate authorized in G.S. 20-79.4 or the commercial vehicle is a

trailer or is licensed for 6,000 pounds or less. The plate issued for vehicles licensed for 7,000 pounds through 26,000 pounds must bear the word "weighted".

Except as otherwise provided in this subsection, a registration plate issued by the Division for a private passenger vehicle or for a private hauler vehicle licensed for 6,000 pounds or less shall be a "First in Flight" plate. A "First in Flight" plate shall have the words "First in Flight" printed at the top of the plate above all other letters and numerals. The background of the plate shall depict the Wright Brothers biplane flying over Kitty Hawk Beach, with the plane flying slightly upward and to the right. The following special registration plates do not have to be a "First in Flight" plate. The design of the plates that are not "First in Flight" plates must be approved by the Division and the State Highway Patrol for clarity and ease of identification.

(1) Friends of the Great Smoky Mountains National Park.
(2) Rocky Mountain Elk Foundation.
(3) Blue Ridge Parkway Foundation.
(4) Friends of the Appalachian Trail.
(5) NC Coastal Federation.
(6) In God We Trust.
(7) Stock Car Racing Theme.
(8) Buddy Pelletier Surfing Foundation.
(9) Guilford Battleground Company.
(10) National Wild Turkey Federation.
(11) North Carolina Aquarium Society.
(12) First in Forestry.
(13) North Carolina Wildlife Habitat Foundation.
(14) NC Trout Unlimited.
(15) Ducks Unlimited.
(16) Lung Cancer Research.
(17) NC State Parks.
(18) Support Our Troops.
(19) US Equine Rescue League."

SECTION 2. G.S. 20-79.4(b) reads as rewritten:

"(b) Types. – The Division shall issue the following types of special registration plates:

...

(3h) Breast Cancer Awareness. – Issuable to the registered owner of a motor ~~vehicle.~~ vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Early Detection Saves Lives" and a representation of a pink ribbon. ~~The Division must receive 300 or more applications for the plate before it may be developed.~~

...

(3n) Carolina's Aviation Museum. – This plate is issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Carolina's Aviation Museum" and a logo provided by the museum.

...

(14e) Emergency Medical Technician. – Issuable to an emergency medical technician, as defined in G.S. 131E-155. The plate shall bear the Star of Life logo and the letters "EMT". The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

...

(15c) Fox Hunting. – Issuable to the registered owner of a motor vehicle. The plate shall bear the phrase "Fox Hunting" and a picture of a foxhound on the left side and a picture of a fox on the right side. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

...

(16b) Greyhound Friends of North Carolina. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase 'Greyhound Friends of North Carolina' and a picture of a greyhound.

...

(16f) Gold Star Lapel Button. – Issuable to the recipient of the Gold Star lapel button. The plate shall bear the emblem of the Gold Star lapel button and the words "Gold Star". The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

...

(19b) International Association of Fire Fighters. ~~Issuable to a member of the International Association of Fire Fighters.~~ The plate authorized by this subdivision shall bear the logo of the International Association of Fire Fighters. The Division may not issue the plate ~~authorized by this subdivision~~ unless it receives at least 300 applications for the plate. The plate is issuable to one of the following:

a. A person who presents proof of active membership in the International Association of Fire Fighters for the year in which the license plate is sought.

b. The surviving spouse of a person who was a member of the International Association of Fire Fighters, so long as the surviving spouse continues to renew the plate and does not remarry.

...

(20f) Kappa Alpha Psi Fraternity. – Issuable to the registered owner of a motor vehicle. The plate shall bear the fraternity's symbol and name. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

...

(22c) Leukemia & Lymphoma Society. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase and logo provided by The Leukemia & Lymphoma Society that reflects "TEAM IN TRAINING".

...

(22k) Lung Cancer Research. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Lung Cancer Research" and a representation of the American Lung Association's Red Cross.

...

(28k) NC Children's Promise. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "N.C. Children's Promise" and a logo representing the North Carolina Children's Promise organization.

...

(32g) Prince Hall Mason. – This plate is issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Prince Hall Mason" and a picture of the Masonic symbol.

...

(45a) Support Our Troops. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear a picture of a soldier and a child and shall bear the words: "Support Our Troops".

...

(46c) US Equine Rescue League. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "United States Equine Rescue League", and a depiction of two horses in a circle."

SECTION 3. G.S. 20-79.7(a) reads as rewritten:

"(a) Fees. – Upon request, the Division shall provide and issue free of charge one registration plate to a recipient of ~~the Congressional Medal of Honor,~~ a Legion of Valor award, a 100% disabled veteran, and an ex-prisoner of war. All other special registration plates, including additional ~~Congressional Medal of Honor,~~ Legion of Valor, 100% Disabled Veteran, and Ex-Prisoner of War plates, are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

Special Plate	Additional Fee Amount
Coastal Conservation Association	$30.00
Crystal Coast	$30.00
El Pueblo	$30.00
First in Forestry	$30.00
Historical Attraction	$30.00
HOMES4NC	$30.00
In God We Trust	$30.00

North Carolina 4-H Development Fund	$30.00
North Carolina Libraries	$30.00
Personalized	$30.00
Share the Road	$30.00
State Attraction	$30.00
Stock Car Racing Theme	$30.00
Support Our Troops	$30.00
Buffalo Soldiers	$25.00
Collegiate Insignia	$25.00
Goodness Grows	$25.00
High School Insignia	$25.00
Kids First	$25.00
Olympic Games	$25.00
National Multiple Sclerosis Society	$25.00
National Wild Turkey Federation	$25.00
NC Agribusiness	$25.00
NC Children's Promise	$25.00
NC Coastal Federation	$25.00
Nurses	$25.00
(Effective until June 30, 2006) Rocky Mountain Elk Foundation	$25.00
Special Olympics	$25.00
Surveyor Plate	$25.00
The V Foundation for Cancer Research Division	$25.00
University Health Systems of Eastern Carolina	$25.00
Alpha Phi Alpha Fraternity	$20.00
Animal Lovers	$20.00
ARC of North Carolina	$20.00
Audubon North Carolina	$20.00
Autism Society of North Carolina	$20.00
Be Active NC	$20.00
Breast Cancer Awareness	$20.00
Buddy Pelletier Surfing Foundation	$20.00
Daughters of the American Revolution	$20.00
Ducks Unlimited	$20.00
Greyhound Friends of North Carolina	$20.00
Guilford Battleground Company	$20.00
(Effective until June 30, 2006) Harley Owners' Group	$20.00
Litter Prevention	$20.00
March of Dimes	$20.00
NC Trout Unlimited	$20.00
NC Wildlife Habitat Foundation	$20.00
Omega Psi Phi Fraternity	$20.00
Prince Hall Mason	$20.00
Save the Sea Turtles	$20.00

Scenic Rivers	$20.00
School Technology	$20.00
SCUBA	$20.00
Soil and Water Conservation	$20.00
Special Forces Association	$20.00
Support Public Schools	$20.00
US Equine Rescue League	$20.00
Wildlife Resources	$20.00
Zeta Phi Beta Sorority	$20.00
Carolina's Aviation Museum	$15.00
Leukemia & Lymphoma Society	$15.00
Lung Cancer Research	$15.00
Shag Dancing	$15.00
Active Member of the National Guard	None
100% Disabled Veteran	None
Ex-Prisoner of War	None
Legion of Valor	None
Purple Heart Recipient	None
Silver Star Recipient	None
All Other Special Plates	$10.00."

SECTION 4. G.S. 20-79.7(b) reads as rewritten:

"(b) Distribution of Fees. – The Special Registration Plate Account and the Collegiate and Cultural Attraction Plate Account are established within the Highway Fund. The Division must credit the additional fee imposed for the special registration plates listed in subsection (a) among the Special Registration Plate Account (SRPA), the Collegiate and Cultural Attraction Plate Account (CCAPA), the Natural Heritage Trust Fund (NHTF), which is established under G.S. 113-77.7, and the Parks and Recreation Trust Fund, which is established under G.S. 113-44.15, as follows:

Special Plate	SRPA	CCAPA	NHTF	PRTF
Alpha Phi Alpha Fraternity	$10	$10	0	0
Animal Lovers	$10	$10	0	0
ARC of North Carolina	$10	$10	0	0
Audubon North Carolina	$10	$10	0	0
Autism Society of North Carolina	$10	$10	0	0
Be Active NC	$10	$10	0	0
Breast Cancer Awareness	$10	$10	0	0
Buddy Pelletier Surfing Foundation	$10	$10	0	0
Buffalo Soldiers	$10	$15	0	0
Carolina's Aviation Museum	$10	$5	0	0
Coastal Conservation Association	$10	$20	0	0
Crystal Coast	$10	$20	0	0
Daughters of the American Revolution	$10	$10	0	0
Ducks Unlimited	$10	$10	0	0

El Pueblo	$10	$20	0	0
First in Forestry	$10	$10	$10	0
Goodness Grows	$10	$15	0	0
Greyhound Friends of North Carolina	$10	$10	0	0
Guilford Battleground Company	$10	$10	0	0
(Effective until June 30, 2006)				
Harley Owners' Group	$10	$10	0	0
High School Insignia	$10	$15	0	0
Historical Attraction	$10	$20	0	0
HOMES4NC	$10	$20	0	0
In God We Trust	$10	$20	0	0
In-State Collegiate Insignia	$10	$15	0	0
Kids First	$10	$15	0	0
Leukemia & Lymphoma Society	$10	$5	0	0
Litter Prevention	$10	$10	0	0
Lung Cancer Research	$10	$5	0	0
March of Dimes	$10	$10	0	0
National Multiple Sclerosis Society	$10	$15	0	0
National Wild Turkey Federation	$10	$15	0	0
NC Agribusiness	$10	$15	0	0
NC Children's Promise	$10	$15	0	0
NC Coastal Federation	$10	$15	0	0
NC 4-H Development Fund	$10	$20	0	0
NC Trout Unlimited	$10	$10	0	0
North Carolina Libraries	$10	$20	0	0
NC Wildlife Habitat Foundation	$10	$10	0	0
Nurses	$10	$15	0	0
Olympic Games	$10	$15	0	0
Omega Psi Phi Fraternity	$10	$10	0	0
Out-of-state Collegiate Insignia	$10	0	$15	0
Personalized	$10	0	$15	$5
Prince Hall Mason	$10	$10	0	0
(Effective until June 30, 2006)				
Rocky Mountain Elk Foundation	$10	$15	0	0
Save the Sea Turtles	$10	$10	0	0
Scenic Rivers	$10	$10	0	0
School Technology	$10	$10	0	0
SCUBA	$10	$10	0	0
Shag Dancing	$10	$5	0	0
Share the Road	$10	$20	0	0

Soil and Water Conservation	$10	$10	0	0
Special Forces Association	$10	$10	0	0
Special Olympics	$10	$15	0	0
State Attraction	$10	$20	0	0
Stock Car Racing Theme	$10	$20	0	0
Support Our Troops	$10	$20	0	0
Support Public Schools	$10	$10	0	0
Surveyor Plate	$10	$15	0	0
The V Foundation for Cancer Research	$10	$15	0	0
University Health Systems of Eastern Carolina	$10	$15	0	0
US Equine Rescue League	$10	$10	0	0
Wildlife Resources	$10	$10	0	0
Zeta Phi Beta Sorority	$10	$10	0	0
All other Special Plates	$10	0	0	0."

SECTION 5. G.S. 20-81.12(b2) is amended by adding a new subdivision to read:

"(b2) State Attraction Plates. – The Division must receive 300 or more applications for a State attraction plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of State attraction plates to the organizations named below in proportion to the number of State attraction plates sold representing that organization:

...

(1i) North Carolina State Parks. – One-half of the revenue derived from the special plate shall be transferred quarterly to Natural Heritage Trust Fund established under G.S. 113-77.7, and the remaining revenue shall be transferred quarterly to the Parks and Recreation Trust Fund established under G.S. 113-44.15."

SECTION 6. G.S. 20-81.12 is amended by adding the following new subsections to read:

"(b53) Breast Cancer Awareness. – The Division must receive 300 or more applications for a Breast Cancer Awareness plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Breast Cancer Awareness plates to Friends for an Earlier Breast Cancer Test, Inc., to support services to detect breast cancer earlier.

(b54) Carolina's Aviation Museum. – The Division must receive 300 or more applications for a Carolina's Aviation Museum plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Carolina's Aviation Museum plates to the Carolina's Historic Aviation Commission, a domestic nonprofit corporation, to be used to help continue operation of the Museum.

(b55) Greyhound Friends of North Carolina. – The Division must receive 300 or more applications for a Greyhound Friends of North Carolina plate before the plate may

be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of the Greyhound Friends of North Carolina plates to the Greyhound Friends of North Carolina, Inc., to be used for the care and upkeep of retired greyhound racers that are awaiting adoption.

(b56) Leukemia & Lymphoma Society. – The Division must receive 300 or more applications for a Leukemia & Lymphoma Society plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Leukemia & Lymphoma Society plates to the Eastern Chapter of the North Carolina Leukemia & Lymphoma Society, a State-chartered chapter of the national nonprofit organization known as The Leukemia & Lymphoma Society, Inc., a duly registered New York nonprofit corporation. These funds may be divided between the Eastern and Western chapters of the North Carolina Leukemia & Lymphoma Society which shall each use the funds for blood cancer research, awareness, and education.

(b57) Lung Cancer Research. – The Division must receive 300 or more applications for the Lung Cancer Research plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Lung Cancer Research plates to the American Lung Association of North Carolina, Inc., to be used for eliminating lung disease and fostering healthy breathing for all people through prevention, outreach, education, research, and advocacy.

(b58) NC Children's Promise. – The Division must receive 300 or more applications for a N.C. Children's Promise plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of NC Children's Promise plates to The Medical Foundation of North Carolina, Incorporated, to be used to support the North Carolina Children's Promise.

(b59) Prince Hall Mason. – The Division must receive 300 or more applications for a Prince Hall Mason plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Prince Hall Mason plates to The Most Worshipful Prince Hall Grand Lodge of Free and Accepted Masons of North Carolina and Jurisdiction, Inc., to be used for scholarships, family assistance, and other charitable causes.

(b60) Support Our Troops. – The Division must receive 300 or more applications for a Support Our Troops plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Support Our Troops plates to NC Support Our Troops, Inc., to be used to provide support and assistance to the troops and their families.

(b61) US Equine Rescue League. – The Division must receive 300 or more applications for the US Equine Rescue League plate before the plate may be developed. The Division must transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of US Equine Rescue League plates to the United States Equine Rescue League, Inc., to be used for the care and upkeep of rescued equines."

SECTION 7. Section 8 of S.L. 2001-498 reads as rewritten:

"**SECTION 8.** Section 7 of this act becomes effective at the earliest practical date, but no later than January 1, 2003. The remainder of this act is effective when it becomes law. ~~Sections 1(b), 3(b), 4(b), and 6(b) expire on June 30, 2006.~~"

SECTION 8. As applied to G.S. 20-79.4, the authority in G.S. 164-10 for the Division of Legislative Drafting and Codification to reletter or renumber section subdivisions includes the authority to renumber all the subdivisions in G.S. 20-79.4(b) in sequential and alphabetical order and to eliminate mixed number-letter subdivision designations. This section expires July 1, 2011.

SECTION 9. The increase in the additional fee for the Breast Cancer Awareness special plate, as amended in Section 3 of this act, becomes effective January 1, 2007, and applies to plates issued or renewed on or after that date. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 2

SENATE BILL 1373
Finance Committee Substitute Adopted 6/19/06

Short Title: Eliminate Fee for Legion of Valor Plate. (Public)

Sponsors:

Referred to:

May 16, 2006

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE THE REGISTRATION PLATE FEE REQUIREMENT FOR INDIVIDUALS WHO QUALIFY FOR THE LEGION OF VALOR SPECIAL REGISTRATION PLATE AND TO ADD THE DUCKS UNLIMITED SPECIAL PLATE TO THE LIST OF PLATES NOT REQUIRED TO HAVE A "FIRST IN FLIGHT" BACKGROUND.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-79.7(a) reads as rewritten:

"(a) Fees. – Upon request, the Division shall provide and issue free of charge one registration plate to a recipient of ~~the Congressional Medal of Honor,~~ a Legion of Valor award, a 100% disabled veteran, and an ex-prisoner of war. All other special registration plates, including additional ~~Congressional Medal of Honor,~~ Legion of Valor, 100% Disabled Veteran, and Ex-Prisoner of War plates, are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

Special Plate	Additional Fee Amount
Coastal Conservation Association	$30.00
Crystal Coast	$30.00
El Pueblo	$30.00
First in Forestry	$30.00
Historical Attraction	$30.00
HOMES4NC	$30.00
In God We Trust	$30.00
North Carolina 4-H Development Fund	$30.00
North Carolina Libraries	$30.00
Personalized	$30.00
Share the Road	$30.00
State Attraction	$30.00
Stock Car Racing Theme	$30.00

Buffalo Soldiers	$25.00
Collegiate Insignia	$25.00
Goodness Grows	$25.00
High School Insignia	$25.00
Kids First	$25.00
Olympic Games	$25.00
National Multiple Sclerosis Society	$25.00
National Wild Turkey Federation	$25.00
NC Agribusiness	$25.00
NC Coastal Federation	$25.00
Nurses	$25.00
(Effective until June 30, 2006) Rocky Mountain Elk Foundation	$25.00
Special Olympics	$25.00
Surveyor Plate	$25.00
The V Foundation for Cancer Research Division	$25.00
University Health Systems of Eastern Carolina	$25.00
Alpha Phi Alpha Fraternity	$20.00
Animal Lovers	$20.00
ARC of North Carolina	$20.00
Audubon North Carolina	$20.00
Autism Society of North Carolina	$20.00
Be Active NC	$20.00
Buddy Pelletier Surfing Foundation	$20.00
Daughters of the American Revolution	$20.00
Ducks Unlimited	$20.00
Guilford Battleground Company	$20.00
(Effective until June 30, 2006) Harley Owners' Group	$20.00
Litter Prevention	$20.00
March of Dimes	$20.00
NC Trout Unlimited	$20.00
NC Wildlife Habitat Foundation	$20.00
Omega Psi Phi Fraternity	$20.00
Save the Sea Turtles	$20.00
Scenic Rivers	$20.00
School Technology	$20.00
SCUBA	$20.00
Soil and Water Conservation	$20.00
Special Forces Association	$20.00
Support Public Schools	$20.00
Wildlife Resources	$20.00
Zeta Phi Beta Sorority	$20.00
Shag Dancing	$15.00
Active Member of the National Guard	None
100% Disabled Veteran	None

Ex-Prisoner of War	None
Legion of Valor	None
Purple Heart Recipient	None
Silver Star Recipient	None
All Other Special Plates	$10.00."

SECTION 2. G.S. 20-63(b) reads as rewritten:

"(b) Every license plate shall have displayed upon it the registration number assigned to the vehicle for which it is issued, the name of the State of North Carolina, which may be abbreviated, and the year number for which it is issued or the date of expiration. A plate issued for a commercial vehicle, as defined in G.S. 20-4.2(1), and weighing 26,001 pounds or more, must bear the word "commercial," unless the plate is a special registration plate authorized in G.S. 20-79.4 or the commercial vehicle is a trailer or is licensed for 6,000 pounds or less. The plate issued for vehicles licensed for 7,000 pounds through 26,000 pounds must bear the word "weighted".

Except as otherwise provided in this subsection, a registration plate issued by the Division for a private passenger vehicle or for a private hauler vehicle licensed for 6,000 pounds or less shall be a "First in Flight" plate. A "First in Flight" plate shall have the words "First in Flight" printed at the top of the plate above all other letters and numerals. The background of the plate shall depict the Wright Brothers biplane flying over Kitty Hawk Beach, with the plane flying slightly upward and to the right. The following special registration plates do not have to be a "First in Flight" plate. The design of the plates that are not "First in Flight" plates must be approved by the Division and the State Highway Patrol for clarity and ease of identification.

(1) Friends of the Great Smoky Mountains National Park.
(2) Rocky Mountain Elk Foundation.
(3) Blue Ridge Parkway Foundation.
(4) Friends of the Appalachian Trail.
(5) NC Coastal Federation.
(6) In God We Trust.
(7) Stock Car Racing Theme.
(8) Buddy Pelletier Surfing Foundation.
(9) Guilford Battleground Company.
(10) National Wild Turkey Federation.
(11) North Carolina Aquarium Society.
(12) First in Forestry.
(13) North Carolina Wildlife Habitat Foundation.
(14) NC Trout Unlimited.
(15) Ducks Unlimited."

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

SENATE BILL 1373:
Various Special License Plates

BILL ANALYSIS

Committee:	House Finance	**Date:**	July 5, 2006
Introduced by:	Sen. Rand	**Summary by:**	Cindy Avrette
Version:	PCS to Second Edition S1373-CSRB		Committee Counsel

SUMMARY: ***Senate Bill 1373 would eliminate the vehicle registration fee of $28 and the additional special registration plate fee of $10 for recipients of the Legion of Valor special registration plate. The Proposed House Committee Substitute for Senate Bill 1373 incorporates the eight special license plate provisions passed by the House in House Bill 1993 and adds the following provisions:***

- ***It would increase the additional fee for 'Breast Cancer Awareness' special plate from $10 to $20. The additional fee revenue would be transferred to Friends for an Earlier Breast Cancer Test, Inc. to be used to support services to detect breast cancer earlier.***
- ***It would authorize the Division of Motor Vehicles to issue the following new special plates:***
  - ***Gold Star.***
  - ***Kappa Alpha Psi Fraternity***
  - ***Greyhound Friends of North Carolina***
  - ***North Carolina State Parks***
- ***It would add the Ducks Unlimited, Lung Cancer Research, NC State Parks, Support Our Troops, and US Equine Rescue League special registration plates to the list of plates that do not have to be on a 'First in Flight' background.***
- ***It would authorize the Division to issue an International Association of Fire Fighters special license plate to a surviving spouse.***
- ***It would remove the sunset on the special plates for Harley Owners' Group and Rocky Mountain Elk Foundation special license plates. Both of these plates have been issued.***
- ***It would authorize the Reviser of the Statutes to number the special plates sequentially.***

CURRENT LAW: The Division of Motor Vehicles is authorized to issue more than 100 special license plates. As a general rule, the fee for a special registration plate is the regular vehicle registration fee plus a $10 special registration plate fee.[1] The Division may issue one free registration plate to a recipient of the Congressional Medal of Honor, a 100% disabled veteran, and an ex-prisoner of war. All other special registration plates, including additional plates Congressional Medal of Honor, 100% disabled veteran, and ex-prisoner of war are subject to the regular motor vehicle registration fee of $28 and the additional special registration plate fee of $10.

The $10 special registration plate fee is credited to the Special Registration Plate Account. After deducting the cost of the plates from this account, $1,000,000 is annually appropriated to provide

[1] One registration plate is issued free of charge to a recipient of the Congressional Medal of Honor, a 100% Disabled Veteran, or an ex-prisoner of war. Four special registration plates are exempt from the $10 special plate fee: active member of the National Guard, Legion of Valor, Purple Heart Recipient, and the Silver Star Recipient.

operating assistance for ten Visitor Centers.[2] The Centers are located in Brunswick, Camden, Carteret, Caswell, Columbus, Macon, McDowell, Transylvania, Tyrell, and Watauga Counties.[3] The remaining revenue in the account is transferred quarterly to the Department of Commerce for advertising (33%), the Department of Transportation for highway beautification (50%), and the Department of Human Resources to promote travel accessibility for disabled persons (17%).

The cost of some special plates includes a fee in addition to the $10 special registration plate fee. In those instances, the first $10 goes to the special registration plate fund and the remainder is transferred quarterly to designated beneficiaries of the additional fee amount.

BILL ANALYSIS: Senate Bill 1373 would authorize the Division of Motor Vehicles to issue one free registration plate to recipients of a Legion of Valor award. Under current law, recipients of the Congressional Medal of Honor may receive one free registration plate. In 1993, the General Assembly replaced the Congressional Medal of Honor special registration plate authorization with a Legion of Valor special plate authorization. The Legion of Valor plate authorization includes not only the Congressional Medal of Honor, but also the Distinguished Service Cross, the Navy Cross, and the Air Force Cross. Although the scope of the special plate authorization was expanded in 1993 to include the Distinguished Service Cross, the Navy Cross, and the Air Force Cross, the authorization to receive one free registration plate was not. This bill would replace the one free plate authorization for the Congressional Medal of Honor recipient with the same authorization for a recipient of the Legion of Valor award. Any additional plates issued to a recipient would be subject to the fees. There are 19 active Legion of Valor special registration plates.

The Proposed House Committee Substitute for Senate Bill 1373 would authorize the Division of Motor Vehicles to issue various new special registration plates and it would amend the provisions of a few existing plates. The House of Representatives gave approval to eight of these new plates in House Bill 1993. All of the plates authorized must meet the 300 minimum plate requirement[4] and all of the plates authorized require the $10 special registration plate fee that is credited to the Special Registration Plate Account. The bill provides that the following new plates would not have to be a 'First in Flight' plate[5]:

- Ducks Unlimited
- Lung Cancer Research
- North Carolina State Parks
- Support Our Troops
- US Equine Rescue League

The following chart details the plates authorized by this bill, the cost of each plate, and how the additional revenues derived from the plates, if any, will be distributed and used.

---

[2] There are 12 Visitors' Centers. The two centers that do not receive State funding are located in Dare County.

[3] Each Visitor's Center receives $100,000.

[4] There are 96 organizations trying to obtain the 300 minimum plate applications. Some of the organizations have been trying to meet this minimum number since 1992.

[5] The design of plates that are not 'First in Flight' plates must be approved by the Division and the State Highway Patrol for clarity and ease of identification. G.S. 20-63(b).

Purposes	Additional Fees
Breast Cancer Awareness. – The General Assembly authorized the issuance of this special plate in 2003. This bill would increase the fee for the plate in order to allow the additional fee revenue generated from the sale of the plates to be used to support services to detect breast cancer earlier. ***Sponsor:*** *Sen. Hagan (SB 1202)*	**$20.00**
Carolina's Aviation Museum. – Founded in 1991, the museum is dedicated to preserving the aviation heritage of North and South Carolina. The Museum is located in Charlotte, NC. The additional fee revenue generated from the sale of the plates would be used by the Carolinas Historic Aviation Commission to help continue operation of the Museum. ***Sponsor:*** *Representatives Vinson and Faison (HB 2683)*	**$15.00**
Emergency Medical Technician. – The plate would be issuable to an emergency medical technician. There is already a special plate authorized for firefighters and rescue squads. ***Sponsor:*** *Representative Harrison and Glazier (HB 2073)*	**$10.00**
Fox Hunting. – Fox hunting is a growing sport and an economic factor in eastern North Carolina. ***Sponsor:*** *Representative Crawford (Requested amendment)*	**$10.00**
Gold Star. – The plate would be issuable to the recipient of the Gold Star lapel button. A Gold Star lapel button is issuable to the immediate family members of a person who lost his or her life in active military service.	**$10.00**
Greyhound Friends of North Carolina. – The additional fee revenue generated from the sale of the plate would be transferred to Greyhound Friends of North Carolina, Inc. to be used for the care and upkeep of retired greyhound racers that are awaiting adoption. ***Sponsor:*** *Sen. Berger (requested)*	**$20.00**
International Association of Fire Fighters. – The bill would make two changes to this existing special plate: it would require a person to submit proof of active membership in the Association for the year in which the plate is sought. It would also permit the plate to be issued to the surviving spouse of a member of the Association so long as the spouse continues to renew the plate and does not remarry. ***Sponsor:*** *Sen. Hoyle (requested)*	**$10.00**
Kappa Alpha Psi Fraternity. – The plate would bear the fraternity's symbol and name. ***Sponsor:*** *Sen. Graham (SB 1773)*	**$10.00**
Leukemia and Lymphoma Society. – The additional fee revenue generated from the sale of the plate would be transferred to the Eastern Chapter of the North Carolina Leukemia & Lymphoma Society. The funds may be divided between the Eastern and Western chapters of the North Carolina Leukemia & Lymphoma Society. The funds must be used for blood cancer research, awareness, and education. ***Sponsor:*** *Representatives Weiss; Capps, and Faison (HB 2511)*	**$15.00**
Lung Association. – The additional fee revenue generated from the sale of the plate would be transferred to the American Lung Association of North Carolina, Inc. to be used for eliminating lung disease and fostering healthy breathing for all people through prevention, outreach, education, research, and advocacy. ***Sponsor:*** *Representative Harrison, Martin, Fisher, Haire; Glazier (HB 2072)*	**$15.00**

Prince Hall Mason – The additional fee revenue derived from the sale of the plate would be transferred to The Most Worshipful Prince hall Grand Lodge of Free and Accepted Masons of North Carolina and Jurisdiction, Inc. to be used for scholarships, family assistance, and other charitable causes. ***Sponsor:*** *Representative Pierce, Wainwright; and Faison (HB 2690)*	**$20.00**
NC Children's Promise. – The North Carolina's Children's Promise is a statewide initiative to promote North Carolina's Children's Hospital. Its mission is to secure financial and community resources to provide comprehensive, family-centered healthcare for children of North Carolina. It began in 2002 as a partnership between the N.C. Children's Hospital and the Curtis Media Group. The additional fee revenue generated from the sale of the plates would be transferred to The Medical Foundation of North Carolina, Incorporated, to be used to support the N.C. Children's Promise. ***Sponsor:*** *Representative Insko (HB 2459)*	**$25.00**
NC State Parks. – There is a special plate category for State attractions. The cost of a State attraction plate is $30. This bill would add to the category of State attraction plates the authorization for DMV to issue a NC State Parks plate. The additional fee revenue generated from the sale of the plate would be divided equally between the Natural Heritage Trust Fund and the Parks and Recreation Trust Fund. ***Sponsor:*** *Sen. Albertson (requested)*	**$30.00**
Support Our Troops. – Support Our Troops is a nonprofit organization whose purpose is to provide financial assistance to the troops and their families. The additional fee revenue generated from the sale of the plate would be used to provide support and assistance to the troops and their families. ***Sponsor:*** *Representative Glazier, Dickson, Grady, Pate; Blackwood, Cleveland, Current, Faison, Harrison, McGee, Pierce, Preston, Rapp, Setzer, Spear, Steen, Underhill, Vinson, Wainwright, and Weiss (HB 1993)*	**$30.00**
U. S. Equine Rescue League. – The United States Equine Rescue League's mission is to save, protect, and rehabilitate equines in need. It rescues an average on one hundred equines a year. The additional fee revenue generated from the sale of the plate would be used for the care and upkeep of rescued equines. ***Sponsor:*** *Representative Underhill (HB 2245)*	**$20.00**

S1373e2-SMRB-CSRB

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☒Committee Substitute for

SB 1373 A BILL TO BE ENTITLED AN ACT TO ELIMINATE THE REGISTRATION PLATE FEE REQUIREMENT FOR INDIVIDUALS WHO QUALIFY FOR THE LEGION OF VALOR SPECIAL REGISTRATION PLATE AND TO ADD THE DUCKS UNLIMITED SPECIAL PLATE TO THE LIST OF PLATES NOT REQUIRED TO HAVE A "FIRST IN FLIGHT" BACKGROUND.

☒ With a favorable report as to House committee substitute bill, which changes the title, unfavorable as to Senate committee substitute bill.

(FOR JOURNAL USE ONLY)

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

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 749*
Committee Substitute Favorable 6/1/05
PROPOSED COMMITTEE SUBSTITUTE H749-CSLAx-46 [v.3]

7/5/2006 4:54:31 PM

Short Title: Agreement for Transportation Improvements.-AB (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE BOARD OF TRANSPORTATION TO APPROVE PARTNERSHIP AGREEMENTS TO MAKE NEEDED TRANSPORTATION IMPROVEMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-350(f) reads as rewritten:

"(f) Duties of the Board. – The Board of Transportation shall have duties and powers:

...

(14) To approve partnership agreements with private entities and authorized political subdivisions to finance, by tolls and other financing methods, the cost of acquiring, constructing, equipping, maintaining, and operating highways, roads, streets, and bridges in this State."

SECTION 2. This act becomes effective August 1, 2006.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 749*

Short Title:	Agreement for Transportation Improvements.-AB	(Public)
Sponsors:	Representatives Cole, Coates (Primary Sponsors); and Brown.	
Referred to:	Transportation.	

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE BOARD OF TRANSPORTATION TO APPROVE PARTNERSHIP AGREEMENTS TO MAKE NEEDED TRANSPORTATION IMPROVEMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-350(f) reads as rewritten:

"(f) Duties of the Board. – The Board of Transportation shall have duties and powers:

...

(14) To approve partnership agreements to finance construction and maintenance of highways, roads, streets, and bridges with political subdivisions, including authorized transportation authorities and private entities, to finance, by tolls and other financing methods, the cost of acquiring, constructing, equipping, maintaining, and operating highways, roads, streets, and bridges in this State. Any expenditure approved under this subdivision must be included in the most recently adopted Transportation Improvement Program."

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

HOUSE BILL 749:
Agreement for Transportation Improvements.-AB

BILL ANALYSIS

Committee:	House Finance	**Date:**	July 5, 2006
Introduced by:	Reps. Cole, Coates	**Summary by:**	Martha Walston
Version:	PCS to Second Edition H749-CSLA		Committee Counsel

SUMMARY: ***House Bill 749 is an agency bill that would authorize the North Carolina Board of Transportation to approve partnership agreements with private entities and authorized political subdivisions in order to finance, by tolls and other financing methods, the cost of acquiring, constructing, equipping, maintaining, and operating highways, roads, streets, and bridges in the State.***

The proposed committee substitute makes technical changes, amends the effective date, and deletes the requirement that any expenditure under a partnership agreement be included in the most recently adopted Transportation Improvement Program. The 2nd edition was given a favorable report in House Transportation.

House bill 749, as introduced, is identical to Senate Bill 655.

BILL ANALYSIS: House Bill 749 adds the following to the list of statutory duties and powers given to the Board of Transportation:

> To approve partnership agreements with private entities and authorized political subdivisions to finance, by tolls and other financing methods, the cost of acquiring, constructing, equipping, maintaining, and operating highways, roads, streets, and bridges in this State.

The bill gives the DOT the needed authority to enter into an agreement with the North Carolina Turnpike Authority in order for the DOT to participate in the cost of construction of a turnpike project using federal funds. The bill also gives the DOT the flexibility to do other public and private financing. The DOT requested that expenditures authorized by this proposed power not be bound by the 7-year period of the Transportation Improvement Program (TIP). Therefore, the sentence, requiring expenditures to be included in the most recently adopted TIP, is deleted. The TIP is a Board-approved schedule of all major transportation improvement projects and their anticipated cost for a period of seven years into the future.

EFFECTIVE DATE: The bill becomes effective August 1, 2006.

H0749e2-SMLA-CSLA

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☒Committee Substitute for

HB 749 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE BOARD OF TRANSPORTATION TO APPROVE PARTNERSHIP AGREEMENTS TO MAKE NEEDED TRANSPORTATION IMPROVEMENTS.

☒ With a favorable report as to Committee Substitute Bill 2, unfavorable as to Committee Substitute Bill 1.

(FOR JOURNAL USE ONLY)

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

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S D

SENATE BILL 1862*
Finance Committee Substitute Adopted 6/15/06
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1862-PCS75556-RTf-76

Short Title: Limit Nutrient Offset Payments. (Public)

Sponsors:

Referred to:

May 25, 2006

A BILL TO BE ENTITLED

AN ACT TO TEMPORARILY: (1) SET THE PER POUND FACTOR USED BY THE ENVIRONMENTAL MANAGEMENT COMMISSION TO CALCULATE NUTRIENT OFFSET PAYMENTS FOR NITROGEN, (2) REQUIRE THAT NUTRIENT OFFSET PAYMENTS BE CALCULATED AS THEY WERE PRIOR TO CERTAIN RULE AMENDMENTS, AND (3) PROVIDE THAT THERE SHALL BE NO NUTRIENT OFFSET PROGRAM FOR PHOSPHORUS AND TO DIRECT THE ENVIRONMENTAL REVIEW COMMISSION TO STUDY ISSUES RELATED TO THE NUTRIENT OFFSET PAYMENT PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding the per pound factors for nutrient offset payments established in 15A NCAC 2B. 0240, as adopted by the Environmental Management Commission on 12 January 2006, the per pound factor for the nutrient offset payment for nitrogen is established as eleven dollars ($11.00) per pound of nitrogen. The payment shall be calculated in accordance with the method used as of 1 January 2006 for determining pounds of nitrogen per acre.

SECTION 2. Notwithstanding 15A NCAC 2B. 0240, as adopted by the Environmental Management Commission on 12 January 2006, there shall be no nutrient offset program for phosphorus pursuant to that rule.

SECTION 3. Study. – The Environmental Review Commission, with the assistance of the Division of Water Quality of the Department of Environment and Natural Resources, shall study issues related to the nutrient offset payment program. The Commission shall specifically study the costs associated with providing nutrient controls that are adequate to offset point source and nonpoint source discharges of nitrogen; whether nutrient offset payments should be authorized for additional nutrients, including phosphorus; and whether the nutrient offset program should be expanded to other areas of the State.

SECTION 4. Report. – The Environmental Review Commission shall report its findings, together with any recommended legislation, to the 2007 General Assembly upon its convening.

SECTION 5. The Division of Water Quality of the Department of Environment and Natural Resources must refund any fee paid in excess of the amount established under this act.

SECTION 6. This act becomes effective 1 August 2006, and applies to all nutrient offset payments, including those set out in 15A NCAC 2B. 0240, as adopted by the Environmental Management Commission on 12 January 2006. This act expires 1 September 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 2

SENATE BILL 1862*
Finance Committee Substitute Adopted 6/15/06

Short Title: Limit Nutrient Offset Payments. (Public)

Sponsors:

Referred to:

May 25, 2006

A BILL TO BE ENTITLED

AN ACT TO SET THE PER POUND FACTOR USED BY THE ENVIRONMENTAL MANAGEMENT COMMISSION TO CALCULATE NUTRIENT OFFSET PAYMENTS AND TO DIRECT THE ENVIRONMENTAL REVIEW COMMISSION TO STUDY ISSUES RELATED TO THE NUTRIENT OFFSET PAYMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding the per pound factors for nutrient offset payments established in 15A NCAC 2B. 0240, as adopted by the Environmental Management Commission on 12 January 2006, the per pound factors for nutrient offset payments are established as follows:

(1) Eleven dollars ($11.00) per pound of nitrogen, calculated in accordance with the method used as of January 1, 2006, for determining pounds of nitrogen per acre.

(2) Forty-five dollars ($45.00) per tenth of a pound of phosphorous.

SECTION 2. Study. – The Environmental Review Commission, with the assistance of the Division of Water Quality of the Department of Environment and Natural Resources, shall study issues related to nutrient offset payments. The Commission shall specifically study the costs associated with providing nutrient controls that are adequate to offset point source and nonpoint source discharges of nitrogen; whether nutrient offset payments should be authorized for additional nutrients, including phosphorus; and whether the nutrient offset program should be expanded to other areas of the State.

SECTION 3. Report. – The Environmental Review Commission shall report its findings, together with any recommended legislation, to the 2007 General Assembly upon its convening.

SECTION 4. The Division of Water Quality of the Department of Environment and Natural Resources must refund any fee paid in excess of the amount established under this act.

SECTION 5. This act becomes effective 1 August 2006, and applies to all nutrient offset payments, including those set out in 15A NCAC 2B. 0240, as adopted by the Environmental Management Commission on 12 January 2006. This act expires 1 September 2007.

SENATE BILL 1862:
Limit Nutrient Offset Payments

BILL ANALYSIS

Committee:	House Finance	**Date:**	July 6, 2006
Introduced by:	Sen. Malone	**Summary by:**	Tim Dodge
Version:	PCS to Second Edition S1862-PCS75556-RTf-76		Legislative Analyst

SUMMARY: ***The Proposed Committee Substitute (PCS) for Senate Bill 1862 would temporarily: (i) set the per pound factors for nitrogen under the Nutrient Offset Fee Program at $11 per pound of nitrogen per year; (ii) repeal the availability of a nutrient offset payment for phosphorous; (iii) direct the Environmental Review Commission (ERC) to study issues related to nutrient offset payments and report to the 2007 General Assembly upon its convening; and (iv) direct the Division of Water Quality (DWQ) of the Department of Environment and Natural Resources (Department) to refund any fee paid in excess of the amounts established under the PCS. The PCS would become effective 1 August 2006 and sunset 1 September 2007.***

BACKGROUND: The Nutrient Offset Fee Program (Program) was established by the Environmental Management Commission (EMC) in 1998 in order to provide new development and new and expanding wastewater discharges an option of paying a fee to the Riparian Buffer Restoration Fund instead of meeting the nitrogen limits required in parts of the State, including the Neuse River Basin. Payment of an offset fee into the Program is voluntary for developers and wastewater dischargers. The offset fees are used by the Department to construct nutrient controls to achieve the nutrient reductions that developers and dischargers would otherwise have to construct.

The original 1998 offset fee was set at $11 per pound of nitrogen per year. In October 2004, the EMC initiated a process to update the offset fees. Based on data provided by North Carolina State University, the EMC determined that the fees for nitrogen should be increased to $57 per pound of nitrogen per year and that a fee for phosphorous should be set at $45 per tenth of pound of phosphorous per year. The EMC determined that these costs reflect the actual costs necessary for the Department to maintain the nutrient offset option as part of a self-sustaining, fee supported program.

Upon completion of the evaluation, the EMC initiated rulemaking to increase the offset fees. The EMC presented the draft rule to the General Assembly's Governmental Operations Committee in October 2005. The EMC adopted the rule in January 2006 and the Rules Review Commission approved it in February 2006. The Rules Review Commission received no letters requesting legislative review of the rule.

CURRENT LAW: 15A NCAC 2B. 0240 (Nutrient Offset Payments) as amended by the EMC provides per pound factors for nutrient offset payments as follows: $57 per pound of nitrogen per year and $45 per tenth of pound of phosphorous per year. The new fees established by the amended rule are scheduled to go into effect on 1 August 2006.

BILL ANALYSIS: The PCS would:

- Establish the per pound factors for nitrogen under the Program at $11.00 per pound, calculated in accordance with the method used as of 1 January 2006 to determine pounds of nitrogen per acre.
- Repeal the availability of a nutrient offset payment option for phosphorous.
- Direct the ERC, with the assistance of DWQ, to study issues related to nutrient offset payments, including costs associated with providing nutrient controls that are adequate to offset point source and nonpoint source discharges of nitrogen; whether nutrient offset payments should be authorized for additional nutrients, and whether the Program should be expanded to other areas of the State. The ERC would report its findings, together with any recommended legislation, to the 2007 General Assembly upon its convening.
- Direct DWQ to refund any fee paid in excess of the amount established under the PCS.

EFFECTIVE DATE: The PCS would become effective 1 August 2006 and apply to all nutrient offset payments. The provisions of the PCS would sunset 1 September 2007.

Jennifer McGinnis, counsel to the Senate Committee on Agriculture, Environment, and Natural Resources, substantially contributed to this summary.

S1862e2-SMSY-PCS75556-RTf-76

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1862*

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

S1862-ARTf-38 [v.2]

Date July 6 ,2006

Comm. Sub. [YES]
Amends Title [YES]
S1862-PCS75556-RTf-76

Representative Luebke

moves to amend the bill on page 1, lines 6 and 7,
by rewriting those lines to read:

"TO CERTAIN RULE AMENDMENTS, (3) PROVIDE THAT THERE SHALL BE NO NUTRIENT OFFSET PROGRAM FOR PHOSPHORUS, AND (4) PROVIDE THAT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES MAY DECLINE TO ACCEPT A NUTRIENT OFFSET PAYMENT IF IT CANNOT PROVIDE THE NITROGEN REDUCTION MEASURES FOR THE AMOUNT OF THE PAYMENT AND TO";

on page 1, line 20,
by rewriting that line to read:

"**SECTION 3.** Notwithstanding 15A NCAC 2B. 0240, the Department of Environment and Natural Resources shall not be required to accept a nutrient offset payment as a means of fulfilling any requirement of any nutrient sensitive waters management strategy if the Department finds that the amount of the payment is not sufficient to cover the full cost of the nitrogen reduction measures needed to comply with the nutrient sensitive waters management strategy. If the Department declines to accept a nutrient offset payment, the Department shall provide a complete estimate of the cost of the nitrogen reduction measures needed to comply with the nutrient sensitive waters management strategy to the person whose payment was not accepted.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1862*

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

S1862-ARTf-38 [v.2]

SECTION 4. Study. – The Environmental Review Commission with the"; and by renumbering the subsequent sections of the bill accordingly.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

ATTACHMENT 7

EDITION No. _____

H. B. No. _____ DATE July 6, 2005

S. B. No. 1862 Amendment No. _____

COMMITTEE SUBSTITUTE S1862-PCS75556-RTf-74 (to be filled in by Principal Clerk)

Rep.) Weiss

Sen.)

moves to amend the bill on page 1, line 14

( ) WHICH CHANGES THE TITLE

by deleting "eleven dollars ($11.00)" and substituting "thirty-five dollars ($35.00)".

SIGNED Jennifer Weiss

ADOPTED _____ FAILED F v v 6 Jul 2005 TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☒Committee Substitute for

SB 1862 A BILL TO BE ENTITLED AN ACT TO SET THE PER POUND FACTOR USED BY THE ENVIRONMENTAL MANAGEMENT COMMISSION TO CALCULATE NUTRIENT OFFSET PAYMENTS AND TO DIRECT THE ENVIRONMENTAL REVIEW COMMISSION TO STUDY ISSUES RELATED TO THE NUTRIENT OFFSET PAYMENTS.

☒ With a favorable report as to House committee substitute bill, which changes the title, unfavorable as to Senate committee substitute bill.

(FOR JOURNAL USE ONLY)

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

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S 2

SENATE BILL 2012
Finance Committee Substitute Adopted 6/22/06

Short Title: SUTA Modifications. (Public)

Sponsors:

Referred to:

May 26, 2006

A BILL TO BE ENTITLED

AN ACT TO ENSURE THAT THE UNEMPLOYMENT TAX CONTRIBUTION RATE OF A BANKRUPT COMPANY WHOSE ASSETS ARE SOLD IN A BANKRUPTCY SALE IS NOT TRANSFERRED TO A COMPANY THAT BUYS THE ASSETS OF THE BANKRUPT COMPANY AND SHARES NO COMMON OWNERSHIP WITH THE BANKRUPT COMPANY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 96-9(c)(4) reads as rewritten:

"(4) Transfer of account. –

a. ~~Whenever any individual, group of individuals, or employing unit, who or which, in any manner succeeds to or acquires substantially all or a distinct and severable portion of the organization, trade, or business of another employing unit as provided in G.S. 96-8, subdivision (5), paragraph b, the account or that part of the account of the predecessor which relates to the acquired portion of the business shall, upon the mutual consent of the parties concerned and approval of the Commission in conformity with the regulations as prescribed therefor, be transferred as of the date of acquisition of the business to the successor employer for use in the determination of his rate of contributions, provided application for transfer is made within 60 days after the Commission notifies the successor of his right to request such transfer, otherwise the effective date of the transfer shall be the first day of the calendar quarter in which such application is filed, and that after the transfer the successor employing unit continues to operate the transferred portion of such organization, trade or business. Provided, however, that the transfer of an account for the purpose of computation of rates shall be deemed to have been~~

~~made prior to the computation date falling within the calendar year within which the effective date of such transfer occurs and the account shall thereafter be used in the computation of the rate of the successor employer for succeeding years, subject, however, to the provisions of paragraph b of this subdivision. Provided there shall be no transfer of account when (i) a person or entity is not an employer at the time of the acquisition and (ii) the person or entity acquired the business or account primarily for the purpose of obtaining a reduced rate of contribution.~~

1. Mandatory. ~~On or after August 1, 1988, whenever any individual, group of individuals, or employing unit, who or which,~~ When an employer, as defined in G.S. 96-8(5)b., in any manner ~~succeeds to or~~ acquires all of the organization, trade, or business of another employing ~~unit as provided in G.S. 96-8, subdivision (5), paragraph b,~~ unit, the account of the predecessor shall be transferred as of the date of the acquisition ~~of the business~~ to the successor employer for use in the determination of ~~his~~ the successor's rate of contributions. This mandatory transfer does not apply when there is no common ownership between the predecessor and the successor, and the successor acquired the assets of the predecessor in a sale in bankruptcy.
2. Consent. ~~Whenever any individual, group of individuals, or employing unit, who or which,~~ When an employer, as defined in G.S. 96-8(5)b., in any manner ~~succeeds to or~~ acquires a distinct and severable portion of the organization, trade, or business of another employing ~~unit as provided in G.S. 96-8, subdivision (5), paragraph b, that~~ unit, the part of the account of the predecessor ~~which~~ that 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~~ the successor's rate of contributions, provided application for transfer is made within 60 days after the Commission notifies the successor of ~~his~~ the right to request such transfer, otherwise the effective date of the transfer shall be the first day of the calendar quarter in which such application is filed, and that after the transfer the successor employing unit continues to

operate the transferred portion of such organization, trade or business. On or after January 1, 2006, whenever part of an organization, trade, or business is transferred between entities subject to substantially common ownership, management, or control, the tax account shall be transferred in accordance with regulations. However, employing units transferring entities with any common ownership, management, or control are not entitled to separate and distinct employer status under this Chapter. Provided, however, that the transfer of an account for the purpose of computation of rates shall be deemed to have been made prior to the computation date falling within the calendar year within which the effective date of such transfer occurs and the account shall thereafter be used in the computation of the rate of the successor employer for succeeding years, subject, however, to the provisions of paragraph b of this subdivision. No request for a transfer of the account will be accepted and no transfer of the account will be made if the request for the transfer of the account is not received within two years of the date of acquisition or notification by the Commission of the right to request such transfer, whichever occurs later. However, in no event will a request for a transfer be allowed if an account has been terminated because an employer ceases to be an employer pursuant to G.S. 96-9(c)(5) and G.S. 96-11(d) regardless of the date of notification.

a1. A new employing unit shall not be assigned a discrete employer number when there is an acquisition or change in the form or organization of an existing business enterprise, or severable portion thereof, and there is a continuity of control of the business enterprise. That new employing unit shall continue to be the same employer for the purposes of this Chapter as before the acquisition or change in form. As used in this sub-subdivision:

1. "Control of the business enterprise" may occur by means of ownership of the organization conducting the business enterprise, ownership of assets necessary to conduct the business enterprise, security arrangements or lease arrangements covering assets necessary to conduct the business enterprise, or a contract when the ownership, stated arrangements, or contract provide for or allow direction of the internal affairs or conduct of the business enterprise.

2. A "continuity of control" will exist if one or more persons, entities, or other organizations controlling the business enterprise remain in control of the business enterprise after an acquisition or change in form. Evidence of continuity of control shall include, but not be limited to, changes of an individual proprietorship to a corporation, partnership, limited liability company, association, or estate; a partnership to an individual proprietorship, corporation, limited liability company, association, estate, or the addition, deletion, or change of partners; a limited liability company to an individual proprietorship, partnership, corporation, association, estate, or to another limited liability company; a corporation to an individual proprietorship partnership, limited liability company, association, estate, or to another corporation or from any form to another form.

This sub-subdivision shall not modify the provisions of G.S. 96-10(d) – Collections of Contributions Upon Transfer or Cessation of Business.

b. Notwithstanding any other provisions of this section, if the successor employer was an employer subject to this Chapter prior to the date of acquisition of the business, the successor's rate of contribution for the period from that date to the end of the then current contribution year shall be the same as the successor's rate in effect on the date of the acquisition. If the successor was not an employer prior to the date of the acquisition of the business, the successor shall be assigned a standard beginning rate of contribution set forth in G.S. 96-9(b)(1) for the remainder of the year in which the successor acquired the business of the predecessor; however, if the successor makes application for the transfer of the account within 60 days after notification by the Commission of the right to do so and the account is transferred, or meets the requirements for mandatory transfer, the successor shall be assigned for the remainder of the year the rate applicable to the predecessor employer or employers on the date of acquisition of the business, as long as there was only one predecessor or, if more than one, the predecessors had identical rates. In the event the rates of the predecessor were not identical, the rate of the successor shall be the highest rate applicable to any of the predecessor employers on the date of acquisition of the business.

Irrespective of any other provisions of this Chapter, when an account is transferred in its entirety by an employer to a

successor, the transferring employer shall thereafter pay the standard beginning rate of contributions set forth in G.S. 96-9(b)(1) and shall continue to pay at that rate until the transferring employer qualifies for a reduction, reacquires the account transferred or acquires the experience rating account of another employer, or is subject to an increase in rate under the conditions prescribed in G.S. 96-9(b)(2) and (3).

c. In those cases where the organization, trade, or business of a deceased person, or insolvent debtor is taken over and operated by an administrator, administratrix, executor, executrix, receiver, or trustee in bankruptcy, such employing units shall automatically succeed to the account and rate of contribution of such deceased person, or insolvent debtor without the necessity of the filing of a formal application for the transfer of such account."

SECTION 2. This act is effective when it becomes law and applies to acquisitions made on or after September 1, 2003.

SENATE BILL 2012: SUTA Modifications

BILL ANALYSIS

Committee:	House Finance	**Date:**	July 5, 2006
Introduced by:	Sen. Bingham	**Summary by:**	Cindy Avrette
Version:	Second Edition		Committee Counsel

SUMMARY: Senate Bill 2012 would relieve a successor employer of the higher unemployment contribution rate of its predecessor when there is no common ownership of the two employers and the successor acquired the assets of the predecessor in a sale in bankruptcy.

This bill would become effective, retroactively, as of September 1, 2003.

CURRENT LAW: Unemployment tax contributions paid by employers depend on both the experience rating of the employer and the fiscal condition of the system. The Employment Security Commission collects UI taxes and sends them to a main account held by the US Treasury in Washington, DC. Funds are then drawn down by ESC as needed for payment of UI benefits. These benefits are paid to people who lose their job through no fault of their own.

G.S. 96-9(c)(4) provides for the transfer of an employer's account for purposes of determining a successor employer's contribution rate when an employer transfers all or part of its assets to another employer. Under current law, when an employing unit acquires all of the assets of another employing unit, the account of the predecessor must be transferred, as of the date of the acquisition, to the successor employer for use in determining the successor's contribution tax rate.

BILL ANALYSIS: Senate Bill 2012 creates an exception to the current law by stating that the otherwise mandatory transfer of the predecessor's account to the successor is not required when:

1. An employer acquires all of the assets of another employing business through a sale in bankruptcy; and
2. There is no common ownership of the employing units.

The bill also makes technical and stylistic changes to the statute.

EFFECTIVE DATE: The act would become effective when it becomes law, and apply to acquisitions made on or after September 1, 2003.

Trina Griffin, counsel to the Senate Finance Committee, substantially contributed to this summary.

S2012e2-SMRB

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

ATTACHMENT 9

EDITION No. _____

H. B. No. _____

S. B. No. 2012

DATE July 6, 2016

Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) Fallon

Sen.)

1 moves to amend the bill on page 2, line 21

2 ( ) WHICH CHANGES THE TITLE

3 by deleting "does" and substituting "shall".

4

5

6

7

9

10

11

12

13

14

15

16

17

18

19

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☒Committee Substitute for

SB 2012 A BILL TO BE ENTITLED AN ACT TO ENSURE THAT THE UNEMPLOYMENT TAX CONTRIBUTION RATE OF A BANKRUPT COMPANY WHOSE ASSETS ARE SOLD IN A BANKRUPTCY SALE IS NOT TRANSFERRED TO A COMPANY THAT BUYS THE ASSETS OF THE BANKRUPT COMPANY AND SHARES NO COMMON OWNERSHIP WITH THE BANKRUPT COMPANY.

☒ With a favorable report, as amended.

(FOR JOURNAL USE ONLY)

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 2873*

Committee Substitute Favorable 6/29/06

PROPOSED COMMITTEE SUBSTITUTE H2873-PCS30620-RTf-82

Short Title: Safe Drinking Water/Private Wells. (Public)

Sponsors:

Referred to:

May 30, 2006

A BILL TO BE ENTITLED

AN ACT TO REQUIRE PERMITTING AND INSPECTION OF NEW PRIVATE DRINKING WATER WELLS AND TO REQUIRE WATER QUALITY TESTING OF PRIVATE DRINKING WATER WELLS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 87-85 is amended by adding a new subdivision to read:

"(10a) 'Private drinking water well' means any excavation that is cored, bored, drilled, jetted, dug, or otherwise constructed to obtain groundwater for human consumption and that serves or is proposed to serve 14 or fewer service connections or that serves or is proposed to serve 24 or fewer individuals. The term 'private drinking water well' includes a well that supplies drinking water to a transient noncommunity water system as defined in 40 Code of Federal Regulations § 141.2 (1 July 2003 Edition)."

SECTION 2. G.S. 87-87 reads as rewritten:

"**§ 87-87. Authority to adopt rules, regulations, and procedures.**

The Environmental Management Commission shall ~~adopt, and may from time to time amend, rules and regulations not inconsistent with this Article~~ adopt rules governing the location, construction, repair, and abandonment of wells, the operation of water wells or well systems with a designed capacity of 100,000 gallons per day or greater, and the installation and repair of pumps and pumping ~~equipment, and~~ equipment. The Environmental Management Commission shall be responsible for the administration of this ~~Article. With respect thereto it~~ Article and shall:

(1) Hold public hearings, upon not less than 30 days' prior notice setting forth the date, place, and time of hearing, and the proposed rules and regulations to be considered at said public hearing, which notice shall be published in one or more newspapers having general circulation

throughout the State, in connection with proposed rules and regulations and amendments ~~thereto;~~thereto.

(2) Enforce the provisions of this Article, and any rules and regulations not inconsistent with the provisions of this Article adopted pursuant ~~thereto;~~thereto.

(3) Establish procedures and forms for the submission, review, approval, and rejection of applications, notifications, and reports required under this ~~Article;~~Article.

(4) Issue such additional regulations as may be necessary to carry out the provisions of this ~~Article; and~~Article.

(5) Neither adopt nor enforce any rule or regulation that concerns the civil liability of an owner to a well driller for any costs or expenses of drilling and installing a well for the owner.

(6) Adopt rules governing the permitting and inspection by the Commission of private drinking water wells with a designed capacity of 100,000 gallons per day or greater.

(7) Adopt rules governing the permitting and inspection by local health departments of private drinking water wells pursuant to G.S. 87-97."

SECTION 3. G.S. 87-88 reads as rewritten:

"**§ 87-88. General standards and requirements.**

(a) Prior Permission. – Prior permission shall be obtained from the Environmental Management Commission for the construction of (i) any water well or of well systems with a designed capacity of 100,000 gallons per day or greater; and (ii) of any well in a geographical area where the Environmental Management Commission finds, after public hearings, such permission to be reasonably necessary to protect the groundwater resources and the public welfare, safety and health, taking into consideration other applicable State laws; provided, however, that the Environmental Management Commission shall not reject any application under this subsection for permission to construct a well except upon the ground that the well would not be in compliance with a provision of this Article or with a rule or regulation of the Environmental Management Commission adopted pursuant to the provisions of G.S. 87-87 of this Article. Notification of approval or rejection of an application for permission to construct a well shall be given the applicant within a period of 15 days after receipt of such application. Private drinking water wells (i) with a designed capacity of 100,000 gallons per day or greater or (ii) that are to be constructed in a geographical area where the Environmental Management Commission has found that prior permission is necessary shall be subject to permitting and inspection by the Environmental Management Commission and shall not be subject to permitting and inspection by a local health department. All other private drinking water wells shall be subject to permitting and inspection by the local health department as provided in G.S. 87-97.

(b) Reports. – Any person completing or abandoning any well shall furnish the Environmental Management Commission a certified record of the construction or

abandonment of such well within a period of 30 days after completion of construction or abandonment.

(c) Prevention of Contamination. – Every well shall be constructed and maintained in a condition whereby it is not a source or channel of contamination of the groundwater supply or any aquifer. Wells subject to the provisions of subdivision (a)(i) of this section shall be operated in such a way that they shall not cause the violation of applicable groundwater quality standards. Contamination as used herein shall mean the act of introducing into water foreign materials of such a nature, quality, and quantity as to cause degradation of the quality of the water.

(d) Valves and Casing on Flowing Artesian Wells. – Valves and casing on all flowing artesian wells shall be maintained in a condition so that the flow of water can be completely stopped when the well is not being put to a beneficial use. Valves shall be closed when a beneficial use is not being made.

(e) Access Port. – Every water-supply well and such other wells, as may be specified by the Environmental Management Commission, shall be equipped with a usable access port or air line and to be a minimum of 0.5 inch inside diameter opening so that the position of the water level can be determined at any time. Such port shall be installed and maintained in such manner as to prevent entrance of water or foreign material.

(f) Mineralized Water. – Whenever a water-bearing stratum or aquifer that contains nonpotable mineralized water is encountered in well construction, the stratum shall be adequately cased or cemented off as conditions may require so that contamination of the overlying or underlying groundwater zones will not occur.

(g) Polluted Water. – In constructing any well, all water-bearing zones that are known to contain polluted water shall be adequately cased or cemented off so that pollution of the overlying and underlying groundwater zones will not occur.

(h) Well Test. – Every water-supply well shall be tested for capacity by a method and for a period of time acceptable to the Department and depending on the intended use of the well.

(i) Chlorination of the Well. – Upon completion of the well construction and pump installation, all water-supply wells installed for the purpose of obtaining groundwater for ~~domestic~~ human consumption and all private drinking water wells shall be sterilized in accordance with standards for sterilization of drinking water wells established by the U.S. Public Health Service.

(j) Use of Well for Recharge or Disposal. – No well shall be used for recharge, injection or disposal purposes without prior permission from the Environmental Management Commission.

(k) Abandonment of Wells. –

(1) Temporary Abandonment: When any well is temporarily removed from service, the top of the well shall be sealed with a water-tight cap or seal.

(2) Permanent Abandonment: Any well that is to be permanently abandoned shall be filled, plugged, or sealed in such a manner as to

prevent the well from being a channel allowing the vertical movement of water and a source of contamination of the groundwater supply.

(3) Abandonment of Water Supply Wells for Other Use: Any water supply well that is removed from service as a potable water supply source may be used for other purposes, including, but not limited to, irrigation, commercial use, or industrial use, and such well is not subject to either subdivision (1) or (2) of this subsection during its use for other purposes."

SECTION 4. Article 7 of Chapter 87 of the General Statutes is amended by adding a new section to read:

"**§ 87-97. Permitting, inspection, and testing of private drinking water wells.**

(a) Mandatory Local Well Programs. – Each county, through the local health department that serves the county, shall implement a private drinking water well permitting, inspection, and testing program. Local health departments shall administer the program and enforce the minimum well construction, permitting, inspection, repair, and testing requirements set out in this Article and rules adopted pursuant to this Article.

(b) Permit Required. – Except for those wells required to be permitted by the Environmental Management Commission pursuant to G.S. 87-88, no person shall:

(1) Construct or assist in the construction of a private drinking water well unless a construction permit has been obtained from the local health department.

(2) Repair or assist in the repair of a private drinking water well unless a repair permit has been obtained from the local health department, except that a permit shall not be required for the repair or replacement of a pump.

(c) Permit Not Required for Maintenance. – A repair permit shall not be required for any private drinking water well maintenance work that does not involve breaking or opening the well seal.

(d) Well Site Evaluation. – The local health department shall conduct a field investigation to evaluate the site on which a private drinking water well is proposed to be located before issuing a permit pursuant to this section. The field investigation shall determine whether there is any abandoned well located on the site, and if so, the construction permit shall be conditioned upon the proper closure of all abandoned wells located on the site in accordance with the requirements of this Article and rules adopted pursuant to this Article. If a private drinking water well is proposed to be located on a site on which a wastewater system subject to the requirements of Article 11 of Chapter 130A of the General Statutes is located or proposed to be located, the application for a construction permit shall be accompanied by a plat, as defined in G.S. 130A-334.

(e) Issuance of Permit. – The local health department shall issue a construction permit or repair permit if it determines that a private drinking water well can be constructed or repaired and operated in compliance with this Article and rules adopted pursuant to this Article. The local health department may impose any conditions on the

issuance of a construction permit or repair permit that it determines to be necessary to ensure compliance with this Article and rules adopted pursuant to this Article.

(f) Expiration and Revocation. – A construction permit or repair permit shall be valid for a period of five years except that the local health department may revoke a permit at any time if it determines that there has been a material change in any fact or circumstance upon which the permit is issued. The foregoing shall be prominently stated on the face of the permit. The validity of a construction permit or a repair permit shall not be affected by a change in ownership of the site on which a private drinking water well is proposed to be located or is located if the location of the well is unchanged and the well and the facility served by the well remain under common ownership.

(g) Certificate of Completion. – Upon completion of construction of a private drinking water well or repair of a private drinking water well for which a permit is required under this section, the local health department shall inspect the well to determine whether it was constructed or repaired in compliance with the construction permit or repair permit. If the local health department determines that the private drinking water well has been constructed or repaired in accordance with the requirements of the construction permit or repair permit, this Article, and rules adopted pursuant to this Article, the local health department shall issue a certificate of completion. No person shall place a private drinking water well into service without first having obtained a certificate of completion. No person shall return a private drinking water well that has undergone repair to service without first having obtained a certificate of completion.

(h) Drinking Water Testing. – Within 30 days after it issues a certificate of completion for a newly constructed private drinking water well, the local health department shall test the water obtained from the well for the following parameters: arsenic, barium, cadmium, chromium, copper, fluoride, lead, iron, magnesium, manganese, mercury, nitrates, nitrites, selenium, silver, sodium, zinc, pH, and bacterial indicators.

(i) Commission for Health Services to Adopt Drinking Water Testing Rules. – The Commission for Health Services shall adopt rules governing the sampling and testing of well water and the reporting of test results. The rules shall allow local health departments to designate third parties to collect and test samples and report test results. The rules shall also provide for corrective action and retesting where appropriate. The Commission for Health Services may by rule require testing for additional parameters if the Commission makes a specific finding that testing for the additional parameters is necessary to protect public health.

(j) Test Results. – The local health department shall provide test results to the owner of the newly constructed private drinking water well and, to the extent practicable, to any leaseholder of a dwelling unit or other facility served by the well at the time the water is sampled.

(k) Registry of Permits and Test Results. – Each local health department shall maintain a registry of all private drinking water wells for which a construction permit or repair permit is issued. The registry shall specify the physical location of each private drinking water well and shall include the results of all tests of water from each well. The

local health department shall retain a record of the results of all tests of water from a private drinking water well until the well is properly closed in accordance with the requirements of this Article and rules adopted pursuant to this Article.

(l) Authority Not Limited. – This section shall not be construed to limit any authority of local boards of health, local health departments, the Department of Health and Human Services, or the Commission for Health Services to protect public health."

SECTION 5. G.S. 130A-4 reads as rewritten:

"**§ 130A-4. Administration.**

(a) Except as provided in subsection (c) of this section, the Secretary shall administer and enforce the provisions of this Chapter and the rules of the Commission. A local health director shall administer the programs of the local health department and enforce the rules of the local board of health.

(b) When requested by the Secretary, a local health department shall enforce the rules of the Commission under the supervision of the Department. The local health department shall utilize local staff authorized by the Department to enforce the specific rules.

(c) The Secretary of Environment and Natural Resources shall administer and enforce the provisions of Articles 8, 9, 10, 11, and 12 of this Chapter and the rules of the Commission.

(d) When requested by the Secretary of Environment and Natural Resources, a local health department shall enforce the rules of the Commission and the rules adopted by the Environmental Management Commission pursuant to G.S. 87-87 under the supervision of the Department of Environment and Natural Resources. The local health department shall utilize local staff authorized by the Department of Environment and Natural Resources to enforce the specific rules."

SECTION 6. G.S. 130A-39(g) reads as rewritten:

"(g) A local board of health may impose a fee for services to be rendered by a local health department, except where the imposition of a fee is prohibited by statute or where an employee of the local health department is performing the services as an agent of the State. Notwithstanding any other provisions of law, a local board of health may impose cost-related fees for services performed pursuant to Article 11 of this Chapter, "Wastewater Systems," for services performed pursuant to Part 10, Article 8 of this Chapter, "Public Swimming Pools", ~~and~~ for services performed pursuant to Part 11, Article 8 of this Chapter, ~~"Tattooing".~~ "Tattooing", and for services performed pursuant to G.S. 87-97. Fees shall be based upon a plan recommended by the local health director and approved by the local board of health and the appropriate county board or boards of commissioners. The fees collected under the authority of this subsection are to be deposited to the account of the local health department so that they may be expended for public health purposes in accordance with the provisions of the Local Government Budget and Fiscal Control Act."

SECTION 7. G.S. 143-300.8 reads as rewritten:

"**§ 143-300.8. Defense of local sanitarians.**

Any local health department sanitarian enforcing rules of the Commission for Health Services or of the Environmental Management Commission under the supervision of the

Department of Environment and Natural Resources pursuant to ~~G.S. 130A-4(b)~~ G.S. 130A-4 shall be defended by the Attorney General, subject to the provisions of G.S. 143-300.4, and shall be protected from liability in accordance with the provisions of this Article in any civil or criminal action or proceeding brought against the sanitarian in his official or individual capacity, or both, on account of an act done or omission made in the scope and course of enforcing the rules of the Commission for Health ~~Services.~~Services or of the Environmental Management Commission. The Department of Environment and Natural Resources shall pay any judgment against the sanitarian, or any settlement made on his behalf, subject to the provisions of G.S. 143-300.6."

SECTION 8. G.S. 87-97, as enacted by Section 4 of this act, becomes effective 1 July 2008 except that G.S. 87-97(i) becomes effective when this act becomes law. All other sections of this act become effective when this act becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 2873*
Committee Substitute Favorable 6/29/06

Short Title: Safe Drinking Water/Private Wells. (Public)

Sponsors:

Referred to:

May 30, 2006

A BILL TO BE ENTITLED

AN ACT TO REQUIRE PERMITTING AND INSPECTION OF NEW PRIVATE DRINKING WATER WELLS AND TO REQUIRE WATER QUALITY TESTING OF PRIVATE DRINKING WATER WELLS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 87-85 is amended by adding a new subdivision to read:

"(10a) 'Private drinking water well' means any excavation that is cored, bored, drilled, jetted, dug, or otherwise constructed to obtain groundwater for human consumption and that serves or is proposed to serve 14 or fewer service connections or that serves or is proposed to serve 24 or fewer individuals. The term 'private drinking water well' includes a well that supplies drinking water to a transient noncommunity water system as defined in 40 Code of Federal Regulations § 141.2 (1 July 2003 Edition)."

SECTION 2. G.S. 87-87 reads as rewritten:

"**§ 87-87. Authority to adopt rules, regulations, and procedures.**

The Environmental Management Commission shall ~~adopt, and may from time to time amend, rules and regulations not inconsistent with this Article~~ adopt rules governing the location, construction, repair, and abandonment of wells, the operation of water wells or well systems with a designed capacity of 100,000 gallons per day or greater, and the installation and repair of pumps and pumping ~~equipment, and~~ equipment. The Environmental Management Commission shall be responsible for the administration of this ~~Article. With respect thereto it~~ Article and shall:

(1) Hold public hearings, upon not less than 30 days' prior notice setting forth the date, place, and time of hearing, and the proposed rules and regulations to be considered at said public hearing, which notice shall be published in one or more newspapers having general circulation throughout the State, in connection with proposed rules and regulations and amendments ~~thereto;~~thereto.

(2) Enforce the provisions of this Article, and any rules and regulations not inconsistent with the provisions of this Article adopted pursuant ~~thereto;~~thereto.

(3) Establish procedures and forms for the submission, review, approval, and rejection of applications, notifications, and reports required under this ~~Article;~~Article.

(4) Issue such additional regulations as may be necessary to carry out the provisions of this ~~Article; and~~Article.

(5) Neither adopt nor enforce any rule or regulation that concerns the civil liability of an owner to a well driller for any costs or expenses of drilling and installing a well for the owner.

(6) Adopt rules governing the permitting and inspection by the Commission of private drinking water wells with a designed capacity of 100,000 gallons per day or greater.

(7) Adopt rules governing the permitting and inspection by local health departments of private drinking water wells pursuant to G.S. 87-97."

SECTION 3. G.S. 87-88 reads as rewritten:

"**§ 87-88. General standards and requirements.**

(a) Prior Permission. – Prior permission shall be obtained from the Environmental Management Commission for the construction of (i) any water well or of well systems with a designed capacity of 100,000 gallons per day or greater; and (ii) of any well in a geographical area where the Environmental Management Commission finds, after public hearings, such permission to be reasonably necessary to protect the groundwater resources and the public welfare, safety and health, taking into consideration other applicable State laws; provided, however, that the Environmental Management Commission shall not reject any application under this subsection for permission to construct a well except upon the ground that the well would not be in compliance with a provision of this Article or with a rule or regulation of the Environmental Management Commission adopted pursuant to the provisions of G.S. 87-87 of this Article. Notification of approval or rejection of an application for permission to construct a well shall be given the applicant within a period of 15 days after receipt of such application. Private drinking water wells (i) with a designed capacity of 100,000 gallons per day or greater or (ii) that are to be constructed in a geographical area where the Environmental Management Commission has found that prior permission is necessary shall be subject to permitting and inspection by the Environmental Management Commission and shall not be subject to permitting and inspection by a local health department. All other private drinking water wells shall be subject to permitting and inspection by the local health department as provided in G.S. 87-97.

(b) Reports. – Any person completing or abandoning any well shall furnish the Environmental Management Commission a certified record of the construction or abandonment of such well within a period of 30 days after completion of construction or abandonment.

(c) Prevention of Contamination. – Every well shall be constructed and maintained in a condition whereby it is not a source or channel of contamination of the groundwater supply or any aquifer. Wells subject to the provisions of subdivision (a)(i) of this section shall be operated in such a way that they shall not cause the violation of applicable groundwater quality standards. Contamination as used herein shall mean the act of introducing into water foreign materials of such a nature, quality, and quantity as to cause degradation of the quality of the water.

(d) Valves and Casing on Flowing Artesian Wells. – Valves and casing on all flowing artesian wells shall be maintained in a condition so that the flow of water can be completely stopped when the well is not being put to a beneficial use. Valves shall be closed when a beneficial use is not being made.

(e) Access Port. – Every water-supply well and such other wells, as may be specified by the Environmental Management Commission, shall be equipped with a usable access port or air line and to be a minimum of 0.5 inch inside diameter opening so that the position of the water level can be determined at any time. Such port shall be installed and maintained in such manner as to prevent entrance of water or foreign material.

(f) Mineralized Water. – Whenever a water-bearing stratum or aquifer that contains nonpotable mineralized water is encountered in well construction, the stratum shall be adequately cased or cemented off as conditions may require so that contamination of the overlying or underlying groundwater zones will not occur.

(g) Polluted Water. – In constructing any well, all water-bearing zones that are known to contain polluted water shall be adequately cased or cemented off so that pollution of the overlying and underlying groundwater zones will not occur.

(h) Well Test. – Every water-supply well shall be tested for capacity by a method and for a period of time acceptable to the Department and depending on the intended use of the well.

(i) Chlorination of the Well. – Upon completion of the well construction and pump installation, all water-supply wells installed for the purpose of obtaining groundwater for ~~domestic~~ human consumption and all private drinking water wells shall be sterilized in accordance with standards for sterilization of drinking water wells established by the U.S. Public Health Service.

(j) Use of Well for Recharge or Disposal. – No well shall be used for recharge, injection or disposal purposes without prior permission from the Environmental Management Commission.

(k) Abandonment of Wells. –

(1) Temporary Abandonment: When any well is temporarily removed from service, the top of the well shall be sealed with a water-tight cap or seal.

(2) Permanent Abandonment: Any well that is to be permanently abandoned shall be filled, plugged, or sealed in such a manner as to prevent the well from being a channel allowing the vertical movement of water and a source of contamination of the groundwater supply.

(3) Abandonment of Water Supply Wells for Other Use: Any water supply well that is removed from service as a potable water supply source may be used for other purposes, including, but not limited to, irrigation, commercial use, or industrial use, and such well is not subject to either subdivision (1) or (2) of this subsection during its use for other purposes."

SECTION 4. Article 7 of Chapter 87 of the General Statutes is amended by adding a new section to read:

"**§ 87-97. Permitting, inspection, and testing of private drinking water wells.**

(a) Mandatory Local Well Programs. – Each county, through the local health department that serves the county, shall implement a private drinking water well permitting, inspection, and testing program. Local health departments shall administer the program and enforce the minimum well construction, permitting, inspection, repair, and testing requirements set out in this Article and rules adopted pursuant to this Article.

(b) Permit Required. – Except for those wells required to be permitted by the Environmental Management Commission pursuant to G.S. 87-88, no person shall:

(1) Construct or assist in the construction of a private drinking water well unless a construction permit has been obtained from the local health department.

(2) Repair or assist in the repair of a private drinking water well unless a repair permit has been obtained from the local health department.

(c) Permit Not Required for Maintenance. – A repair permit shall not be required for any private drinking water well maintenance work that does not involve breaking or opening the well seal.

(d) Well Site Evaluation. – The local health department shall conduct a field investigation to evaluate the site on which a private drinking water well is proposed to be located before issuing a permit pursuant to this section. The field investigation shall determine whether there is any abandoned well located on the site, and if so, the construction permit shall be conditioned upon the proper closure of all abandoned wells located on the site in accordance with the requirements of this Article and rules adopted pursuant to this Article. If a private drinking water well is proposed to be located on a site on which a wastewater system subject to the requirements of Article 11 of Chapter 130A of the General Statutes is located or proposed to be located, the application for a construction permit shall be accompanied by a plat, as defined in G.S. 130A-334.

(e) Issuance of Permit. – The local health department shall issue a construction permit or repair permit if it determines that a private drinking water well can be constructed or repaired and operated in compliance with this Article and rules adopted pursuant to this Article. The local health department may impose any conditions on the issuance of a construction permit or repair permit that it determines to be necessary to ensure compliance with this Article and rules adopted pursuant to this Article.

(f) Expiration and Revocation. – A construction permit or repair permit shall be valid for a period of five years except that the local health department may revoke a permit at any time if it determines that there has been a material change in any fact or

circumstance upon which the permit is issued. The foregoing shall be prominently stated on the face of the permit. The validity of a construction permit or a repair permit shall not be affected by a change in ownership of the site on which a private drinking water well is proposed to be located or is located if the location of the well is unchanged and the well and the facility served by the well remain under common ownership.

(g) Certificate of Completion. – Upon completion of construction or repair of a private drinking water well, the local health department shall inspect the well to determine whether it was constructed or repaired in compliance with the construction permit or repair permit. If the local health department determines that the private drinking water well has been constructed or repaired in accordance with the requirements of the construction permit or repair permit, this Article, and rules adopted pursuant to this Article, the local health department shall issue a certificate of completion. No person shall place a private drinking water well into service without first having obtained a certificate of completion. No person shall return a private drinking water well that has undergone repair to service without first having obtained a certificate of completion.

(h) Drinking Water Testing. – Within 30 days after it issues a certificate of completion for a newly constructed private drinking water well, the local health department shall test the water obtained from the well for the following parameters: arsenic, barium, cadmium, chromium, copper, fluoride, lead, iron, magnesium, manganese, mercury, nitrates, nitrites, selenium, silver, sodium, zinc, pH, and bacterial indicators.

(i) Commission for Health Services to Adopt Drinking Water Testing Rules. – The Commission for Health Services shall adopt rules governing the sampling and testing of well water and the reporting of test results. The rules shall allow local health departments to designate third parties to collect and test samples and report test results. The rules shall also provide for corrective action and retesting where appropriate. The Commission for Health Services may by rule require testing for additional parameters if the Commission makes a specific finding that testing for the additional parameters is necessary to protect public health.

(j) Test Results. – The local health department shall provide test results to the owner of the newly constructed private drinking water well and, to the extent practicable, to any leaseholder of a dwelling unit or other facility served by the well at the time the water is sampled.

(k) Registry of Permits and Test Results. – Each local health department shall maintain a registry of all private drinking water wells for which a construction permit or repair permit is issued. The registry shall specify the physical location of each private drinking water well and shall include the results of all tests of water from each well. The local health department shall retain a record of the results of all tests of water from a private drinking water well until the well is properly closed in accordance with the requirements of this Article and rules adopted pursuant to this Article.

(l) Authority Not Limited. – This section shall not be construed to limit any authority of local boards of health, local health departments, the Department of Health and Human Services, or the Commission for Health Services to protect public health."

SECTION 5. G.S. 130A-4 reads as rewritten:

"**§ 130A-4. Administration.**

(a) Except as provided in subsection (c) of this section, the Secretary shall administer and enforce the provisions of this Chapter and the rules of the Commission. A local health director shall administer the programs of the local health department and enforce the rules of the local board of health.

(b) When requested by the Secretary, a local health department shall enforce the rules of the Commission under the supervision of the Department. The local health department shall utilize local staff authorized by the Department to enforce the specific rules.

(c) The Secretary of Environment and Natural Resources shall administer and enforce the provisions of Articles 8, 9, 10, 11, and 12 of this Chapter and the rules of the Commission.

(d) When requested by the Secretary of Environment and Natural Resources, a local health department shall enforce the rules of the Commission and the rules adopted by the Environmental Management Commission pursuant to G.S. 87-87 under the supervision of the Department of Environment and Natural Resources. The local health department shall utilize local staff authorized by the Department of Environment and Natural Resources to enforce the specific rules."

SECTION 6. G.S. 130A-39(g) reads as rewritten:

"(g) A local board of health may impose a fee for services to be rendered by a local health department, except where the imposition of a fee is prohibited by statute or where an employee of the local health department is performing the services as an agent of the State. Notwithstanding any other provisions of law, a local board of health may impose cost-related fees for services performed pursuant to Article 11 of this Chapter, "Wastewater Systems," for services performed pursuant to Part 10, Article 8 of this Chapter, "Public Swimming Pools", ~~and~~ for services performed pursuant to Part 11, Article 8 of this Chapter, ~~"Tattooing".~~ "Tattooing", and for services performed pursuant to G.S. 87-97. Fees shall be based upon a plan recommended by the local health director and approved by the local board of health and the appropriate county board or boards of commissioners. The fees collected under the authority of this subsection are to be deposited to the account of the local health department so that they may be expended for public health purposes in accordance with the provisions of the Local Government Budget and Fiscal Control Act."

SECTION 7. G.S. 143-300.8 reads as rewritten:

"**§ 143-300.8. Defense of local sanitarians.**

Any local health department sanitarian enforcing rules of the Commission for Health Services or of the Environmental Management Commission under the supervision of the Department of Environment and Natural Resources pursuant to ~~G.S. 130A-4(b)~~ G.S. 130A-4 shall be defended by the Attorney General, subject to the provisions of G.S. 143-300.4, and shall be protected from liability in accordance with the provisions of this Article in any civil or criminal action or proceeding brought against the sanitarian in his official or individual capacity, or both, on account of an act done or omission made in the scope and course of enforcing the rules of the Commission for

Health ~~Services.~~Services or of the Environmental Management Commission. The Department of Environment and Natural Resources shall pay any judgment against the sanitarian, or any settlement made on his behalf, subject to the provisions of G.S. 143-300.6."

SECTION 8. G.S. 87-97, as enacted by Section 4 of this act, becomes effective 1 July 2008 except that G.S. 87-97(i) becomes effective when this act becomes law. All other sections of this act become effective when this act becomes law.

HOUSE BILL 2873:
Safe Drinking Water/Private Wells

BILL ANALYSIS

Committee:	House Finance	**Date:**	6 July 2006
Introduced by:	Reps. Insko, L. Allen	**Summary by:**	Jennifer Mundt
Version:	PCS to Second Edition H2873-PCS30620-RTf-82		Research Assistant for Environmental Issues

SUMMARY: The proposed committee substitute (PCS) for House Bill 2873 would establish permitting, inspection, and water quality testing requirements for new private drinking water wells.

Changes made in PCS: **The PCS would exclude the repair or replacement of a pump from the requirement to obtain a permit.**

[As introduced, this bill was identical to S2056, as introduced by Sen. Atwater, which is currently in Senate Finance.]

BACKGROUND: Private drinking water wells play an important role in meeting the State's drinking water needs. Greater than 50 percent of North Carolina's population receives its drinking water supplies from groundwater. Currently, there are local well programs in 35 out of the 100 counties. This PCS provides for consistent statewide enforcement of regulations governing the location, construction, operation, repair, maintenance, and abandonment of private drinking water wells.

BILL ANALYSIS: The PCS for House Bill 2873 would make the following changes:

Section 1 defines a "private drinking water well" to include wells that serve or are proposed to serve 14 or fewer service connections or that serve or are proposed to serve 24 or fewer individuals.

Section 2 clarifies the existing authority of the Environmental Management Commission (EMC) to adopt rules governing the permitting and inspection of private drinking water wells with a designed capacity of 100,000 gallons per day or greater or where the EMC finds that prior permission from the EMC is necessary.

This section also authorizes the EMC to adopt rules governing the permitting and inspection of private drinking water wells by local health departments.

Section 3 authorizes the EMC to permit and inspect private drinking water wells with a designed capacity of 100,000 gallons per day or greater or where the EMC finds that prior permission from the EMC is necessary. The PCS authorizes local health departments to permit and inspect all other private drinking water wells.

This section also requires all private drinking water wells installed for the purpose of obtaining groundwater for human consumption to be sterilized in accordance with standards established by the United States Public Health Service.

Section 4 requires:

- Each county, through its local health department, to implement and administer a private drinking water well permitting, inspection, and testing program.

- A permit for the construction or repair of a private drinking water well. A repair permit is not required for private drinking water well maintenance that does not involve breaking or opening the well seal or for the repair or replacement of a pump.
- The local health department to conduct a field investigation to evaluate the proposed site of the private drinking water well and issue a construction permit if it determines that the proposed well can be constructed and operated in compliance with this section. Construction or repair permits are valid for five years and may be revoked by the local health department if it determines that material changes in fact or circumstance upon which the permit is issued have been made.
- A local health department to issue a "certificate of completion" when a new or repaired private drinking water well is inspected and determined to have been constructed or repaired in compliance with the applicable permit. Without a certificate of completion issued by a local health department, no person may place a private drinking water well into service.
- A local health department to test the drinking water obtained from a newly constructed drinking water well within 30 days after it issues a certificate of completion for the presence of 19 pollutants. The Commission will adopt rules governing sampling, testing, and reporting and will allow a local health department to designate third parties to collect and test samples and report test results. The Commission may require the testing of additional pollutants if it is determined that testing for additional pollutants is necessary to protect public health. The local health department must provide the test results to the owner of a newly constructed private drinking water well, and to the extent practicable, to any leaseholder of a dwelling unit or other facility served by the well at the time the water is sampled.
- Each local health department to maintain a registry identifying the location of each private drinking water well and a record of the results of all tests conducted until the well is properly closed.

Section 5 requires a local health department to enforce the private drinking water well rules of the EMC (in addition to those of the Commission for Health Services) when requested by the Secretary of Environment and Natural Resources.

Section 6 authorizes a local health department to impose fees for services rendered under this Article.

Section 7 provides that local health department sanitarians who enforce the rules of the EMC shall be defended by the Attorney General and be protected from civil and criminal liability for acts done or omissions made in the scope of enforcing the EMC's rules (existing law provides this same protection for sanitarians enforcing the Commission for Health Services rules). The State can refuse to provide for the defense of a criminal or civil action or proceeding brought against a current or former employee if the act or omission was not within the scope and course of the employment, the employee acted or failed to act because of actual fraud, corruption or malice, defense of the action would create a conflict of interest between the State and the employee, or defense of the action or proceeding would not be in the best interests of the State. Payment of a judgment or settlement of a claim against a State employee or several State employees may not exceed the amount payable for one claim ($500,000) under the Tort Claims Act.

EFFECTIVE DATE: The provisions of the PCS concerning permitting, inspections, and testing of private drinking water wells by local health departments (Section 4) would become effective 1 July 2008, except the rulemaking authority of the Commission for Health Services, which would become effective when the PCS becomes law. The remainder of the act would become effective when it becomes law.

H2873-PCS30620-RTf-82

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 2873 (Second Edition)

SHORT TITLE: Safe Drinking Water/Private Wells.

SPONSOR(S): Representatives Insko and L. Allen

FISCAL IMPACT

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

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES:					
		See Technical Considerations			
EXPENDITURES:					
DENR		**See Technical Considerations**			
DHHS	**$1,156,828**	**$1,291,517**	**$1,406,239**	**$1,406,239**	**$1,406,239**
POSITIONS (cumulative):					
DENR		**See Technical Considerations**			
DHHS	**3.0**	**3.0**	**3.0**	**3.0**	**3.0**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Local Governments; Department of Environment and Natural Resources, Division of Environmental Health; Department of Health and Human Services, Division of Public Health

EFFECTIVE DATE: G.S. 87-97, as enacted by Section 4 of this act, becomes effective 1 July 2008 except that G.S. 87-97(i) becomes effective when this act becomes law. All other sections of this act become effective when this act becomes law.

BILL SUMMARY: Adds to GS 87-85 a definition of "private drinking water well." Rewrites GS 87-88 to provide that private drinking water wells are subject to permitting and inspection by the Environmental Management Commission if they have a designated capacity of 100,000 or more gallons per day or are to be constructed in an area for which the commission has found that prior permission is necessary. Adds new GS 87-97, effective July 1, 2008, requiring each county, through the local health department, to implement a private drinking water well permitting, inspection, and testing program. Requires local health departments to administer the program and enforce minimum well construction, permitting, inspection, repair, and testing requirements.

Requires a local permit for construction or repair (but not maintenance) of any well not subject to permitting by the commission. Sets out duties of local health departments with respect to evaluation of well sites; issuance of permits (good for up to five years unless revoked based on material change); inspections; issuance of certificates of completion; testing for specified parameters; and maintenance of a registry of permits and test results. Rewrites GS 130A-39(g) to authorize local boards of health to impose cost-related fees for these services. Rewrites GS 87-87 to require the Environmental Management Commission to adopt rules governing the permitting and inspection (1) by the Commission, of private drinking water wells with designated capacity of 100,000 or more gallons per day; and (2) by local health departments, of private drinking water wells pursuant to new GS 87-97. Rewrites GS 143-300.8 to extend the provision for representation by the Attorney General to local health department sanitarians enforcing rules of the Environmental Management Commission. In new GS 87-97, requires the Commission for Health Services to adopt rules governing the sampling and testing of well water and the reporting of test results. This provision in GS 87-97 and the remainder of the bill are effective when the act becomes law.

ASSUMPTIONS AND METHODOLOGY:

With the exception of the drinking water testing, the costs imposed by this bill would be borne by local governments and would include the cost of evaluating well sites, issuing permits and certificates of completion, inspecting wells, testing for specified parameters, and maintenance of a registry of permits and test results. For most local health departments, new employees would need to be hired and trained both to inspect wells and to maintain the registry. Additionally, local governments may choose to pass these costs on to citizens through fees. **Estimates for the cost to local governments are not available at this time.**

Drinking Water Testing

Section 4 amends Article 7 of Chapter 87 of the General Statutes by adding a new section titled "Permitting, inspection, and testing of private drinking water wells." Paragraph (h) of this new section requires local health departments to test water from a newly constructed private drinking water well within 30 days after issuing a certificate of completion. The test shall test for the following parameters: arsenic, barium, cadmium, chromium, copper, fluoride, lead, iron, magnesium, manganese, mercury, nitrates, selenium, silver, sodium, zinc, pH, and bacterial indicators.

It is assumed for the purposes of this analysis that local health departments would use the State Laboratory for Public Health for this testing. As the rules requiring sampling are phased in, the number of samples sent to the State Laboratory for Public Health for this testing would increase until 2008-09, when it is anticipated that all new private wells (estimated at 26,000 wells per year) would have samples sent to the laboratory. The table below summarizes the anticipated number of samples sent to the State Laboratory for Public Health for this testing (labeled "Anticipated number of panel tests") and the anticipated total cost of those tests. The Division of Public Health in the Department of Health and Human Services estimates a total materials cost of $37.1624 per test, a panel kit cost of $10 per test, an additional three (3.0) positions needed to handle the

increased testing volume with a total annualized cost of $157,017, additional operating costs of $23,000, additional equipment needs of $226,000 in the first fiscal year and $150,000 in the second fiscal year, and equipment maintenance costs of $5,000. The total estimated cost for SFY 2006-07 is $1,156,828.

Table1: Estimated Drinking Water Testing Costs

	2006-07	2007-08	2008-09	2009-10	2010-11
Anticipated number of panel tests	*16,646*	*20,387*	*26,000*	*26,000*	*26,000*
Materials cost ($37.1624/panel)	$ 618,605	$ 757,630	$ 966,222	$ 966,222	$ 966,222
Panel Kit Cost ($10/kit)	$ 166,460	$ 203,870	$ 260,000	$ 260,000	$ 260,000
Salaries and Fringes (3 positions)	$ 117,763	$ 157,017	$ 157,017	$ 157,017	$ 157,017
Additional operating costs	$ 23,000	$ 23,000	$ 23,000	$ 23,000	$ 23,000
Equipment Costs	$ 226,000	$ 150,000	$ -	$ -	$ -
Maintenance Costs	$ 5,000	$ 5,000	$ 5,000	$ 5,000	$ 5,000
Total Anticipated Costs	**$ 1,156,828**	**$ 1,291,517**	**$ 1,406,239**	**$ 1,406,239**	**$ 1,406,239**

SOURCES OF DATA: Department of Environment and Natural Resources; Department of Health and Human Services, Division of Public Health

TECHNICAL CONSIDERATIONS:

1. The Joint Conference Committee Report on Senate Bill 1741 includes funding and fee authority sufficient to cover the expenditures anticipated for the Drinking Water Testing section of this bill. It includes non-recurring appropriations of $226,000 for the equipment costs and authorizes three (3.0) positions to be supported through fees. Section 10.20 of this bill amends the General Statutes to give the Secretary of the Department of Health and Human Services the authority to charge a fee of up to $55.00 for analyzing private well-water samples from newly constructed wells sent to the State Laboratory for Public Health. This section also gives the Division of Public Health the authority to use available funds to pay for the authorized positions in 2006-07 and directs that fees collected in 2006-07 be used to replace available funds used.

2. The Joint Conference Committee Report on Senate Bill 1741 contains $1,098,629 in funding for the Department of Environment and Natural Resources to assist counties with local well construction programs. The appropriation provides funds for five (5.0) positions in the Department of Environment and Natural Resources, Division of Environmental Health to serve as technical support and enforcement assistance to all 100 counties as they enforce private water supply well construction standards. This funding also provides $800,000 to fund start-up costs for those counties which still need to establish well construction programs. Twenty-seven (27) counties currently have active private well construction inspection programs. It is anticipated that this money would aid an additional 19 counties in establishing programs.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Kristin Walker & Andrea Russo

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: July 6, 2006

Signed Copy Located in the NCGA Principal Clerk's Offices

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☒Committee Substitute for

HB 2873 A BILL TO BE ENTITLED AN ACT TO REQUIRE PERMITTING AND INSPECTION OF NEW PRIVATE DRINKING WATER WELLS AND TO REQUIRE WATER QUALITY TESTING OF PRIVATE DRINKING WATER WELLS.

☒ With a favorable report as to Committee Substitute Bill 2, unfavorable as to Committee Substitute Bill 1.

(FOR JOURNAL USE ONLY)

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

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1895

Committee Substitute Favorable 6/12/06

PROPOSED COMMITTEE SUBSTITUTE H1895-CSRD-49 [v.4]

6/30/2006 3:17:58 PM

Short Title: Establish High-Risk Pool. (Public)

Sponsors:

Referred to:

May 11, 2006

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE NORTH CAROLINA HEALTH INSURANCE RISK POOL AND TO APPROPRIATE FUNDS THEREFOR.

The General Assembly of North Carolina enacts:

SECTION 1.1. Article 50 of Chapter 58 of the General Statutes is amended by adding a new Part to read:

"Part 7. North Carolina Health Insurance Risk Pool.

"**§ 58-50-245. Definitions.**

For the purposes of this Part:

(1) "Administrator" means the Pool Administrator selected by the Board in accordance with this Part.

(2) "Benefit plan" means coverage offered by the Pool to eligible individuals.

(3) "Board" means the Board of Directors of the Pool.

(4) "Covered person" means any individual resident of this State, excluding dependents, who is eligible to receive health benefits from any insurer.

(5) "Church plan" has the meaning given that term under section 3(33) of the Employee Retirement Income Security Act of 1974.

(6) "Creditable coverage" has the same meaning as prescribed in G.S. 58-68-30(c)(1).

(7) "Dependent" means a resident spouse or unmarried child under the age of 19 years, a child who is a full-time student under the age of 23 years and who is financially dependent upon the parent, a child who is over 18 years of age and for whom a person may be obligated to pay child support, or a child of any age who is disabled and dependent upon the parent.

(8) "Family member" means a parent, grandparent, brother, sister, or child of a dependent residing with the insured.

(9) "Federally defined eligible individual" has the same meaning as "eligible individual" as prescribed in G.S. 58-68-60(b).

(10) "Governmental plan" has the same meaning as prescribed in G.S. 58-68-60(h)(2).

(11) "Group health plan" means an employee welfare benefit plan as defined in section 3(1) of the Employee Retirement Income Security Act of 1974 to the extent that the plan provides medical care, including items and services paid for as medical care to employees or their dependents, as defined under the terms of the plan directly or through insurance, reimbursement, or otherwise.

(12) "Health insurance coverage" shall have the same meaning as prescribed in G.S. 58-68-25(a)(5). Health insurance coverage does not include benefits described in G.S. 58-68-25(b).

(13) "Insurance arrangement" means a plan, program, contract, or other arrangement through which health care services are provided by an employer to its officers or employees but does not include health care services covered through an insurer.

(14) "Insured" means an individual who is eligible to receive benefits from the Pool. The term "insured" includes dependents and family members, as applicable.

(15) "Insurer" means any entity that provides health insurance coverage in this State. For the purposes of this Part, insurer includes:

a. An insurance company;

b. A hospital or medical service corporation;

c. A health maintenance organization;

d. A multiple employer welfare arrangement;

e. A third-party administrator or claims processor;

f. An administrative service organization;

g. Any other nongovernmental entity providing a health benefit plan subject to State insurance regulation; and

h. The Teachers' and State Employees' Comprehensive Major Medical Plan as set forth in Parts 1, 2 and 3 of Article 3 of Chapter 135 of the General Statutes.

(16) "Medical care" means amounts paid for:

a. The diagnosis, cure, mitigation, treatment, or prevention of disease, or amounts paid for the purpose of affecting any structure or function of the body;

b. Transportation primarily for and essential to medical care referred to in sub-subdivision a. of this subdivision; and

c. Insurance covering medical care referred to in sub-subdivisions a. and b. of this subdivision.

(17) "Plan of Operation" means the articles, bylaws, and operating rules and procedures adopted by the Board in accordance with this Part.
(18) "Pool" means the North Carolina Health Insurance Risk Pool.
(19) "Resident" means an individual who:
a. Has been legally domiciled in this State for a period of at least 30 days, except that for a federally defined eligible individual, there shall not be a 30-day requirement;
b. Is legally domiciled in this State on the date of application to the Pool and who is eligible for enrollment in the Pool as a result of the Health Insurance Portability and Accountability Act of 1996; or
c. Is legally domiciled in this State on the date of application to the Pool and is eligible for the credit for health insurance costs under section 35 of the Internal Revenue Code of 1986.
(20) "Significant break in coverage" means a period of 63 consecutive days during all of which the individual does not have any creditable coverage, except that neither a waiting period nor an affiliation period is taken into account in determining a significant break in coverage.
(21) "Trade Adjustment Assistance Program" (TAA) means Title II of the Trade Act of 2002, P.L. 107-210.

"**§ 58-50-250. Risk Pool established; board of directors; plan of operation.**

(a) High-Risk Pool Established. – There is hereby created a nonprofit entity to be known as the North Carolina Health Insurance Risk Pool. The Pool shall operate under the supervision and control of the Board of Directors of the Pool.

(b) Board of Directors Appointment; Membership. – The Board of Directors of the North Carolina Health Insurance Risk Pool shall consist of the Commissioner of Insurance, who shall serve as an ex officio nonvoting member of the Board, and nine members appointed as follows:
(1) Two members of the general public who are not employed by or affiliated with an insurance company or plan, group hospital, or other health care provider, and can reasonably be expected to qualify for coverage in the Pool. Members of the general public include individuals whose only affiliation with health insurance or health care coverage is as a covered member. The two members of the general public shall be appointed as follows:
a. One member upon the recommendation of the President Pro Tempore of the Senate.
b. One member upon the recommendation of the Speaker of the House of Representatives.
(2) Seven members appointed by the Commissioner of Insurance, as follows:
a. Two who are insurers, at least one of whom covers the largest number of persons in the State.
b. One who is licensed to sell health insurance in this State.

c. Two who represent the medical provider community, one as recommended by the North Carolina Medical Society and one as recommended by the North Carolina Hospital Association.

d. One who represents small business, as recommended by the North Carolina Citizens for Business and Industry.

e. One who is either a health policy researcher or a health economist with experience relating to the operation of high-risk insurance pools.

(c) Board of Directors; Terms of Appointment; Vacancies; Compensation. – The initial Board members shall be appointed as follows: three of the members to serve a term of three years; three of the members to serve a term of one year; and three of the members to serve a term of two years. Subsequent Board members shall serve for terms of three years. A Board member's term shall continue until the member's successor is appointed. The Commissioner shall appoint a chair to serve for the initial two years of the Plan's operation. Subsequent chairs shall be elected by a majority vote of the Board members and shall serve for two-year terms. The Commissioner shall fill vacancies in membership and may remove members from the Board for cause. Board members shall not be compensated in their capacity as Board members but shall be reimbursed for reasonable expenses incurred in the necessary performance of their duties.

(d) Plan of Operation. – The Board shall submit to the Commissioner a Plan of Operation for the Pool and any amendments necessary or suitable to assure the fair, reasonable, and equitable administration of the Plan of Operation. The Plan of Operation shall become effective upon approval in writing by the Commissioner consistent with the date on which the coverage under this Part must be made available. If the Board fails to submit a suitable Plan of Operation within 180 days after the appointment of the Board of Directors, or at any time thereafter fails to submit suitable amendments to the Plan of Operation, the Commissioner shall adopt temporary rules necessary or advisable to effectuate the provisions of this section. The rules shall continue in force until modified by the Commissioner or superseded by a Plan of Operation submitted by the Board and approved by the Commissioner. The Plan of Operation shall:

(1) Establish procedures for operation of the Pool.

(2) Establish procedures for selecting a Pool Administrator in accordance with G.S. 58-50-255.

(3) Establish procedures to create a fund for administrative expenses, which shall be managed by the Board.

(4) Establish procedures for the collection, handling, disbursing, accounting, assessing and auditing of assets, monies, and claims of the Pool and the Pool Administrator.

(5) Develop and implement a program to publicize the existence of the Pool, the eligibility requirements, and procedures for enrollment, availability of State premium subsidies, and to maintain public awareness of the Pool.

(6) Establish procedures under which applicants and participants may have grievances reviewed by a grievance committee appointed by the Board in accordance with G.S. 58-50-295.

(7) Establish procedures for identifying and confirming income levels of applicants for Pool coverage who are eligible to receive a State premium subsidy, if a State premium subsidy is available.

(8) Provide for other matters as may be necessary and proper for the execution of the Board's powers, duties, and obligations under this Part.

(e) The Pool shall have the general powers and authority granted under the laws of this State to health insurers and the specific authority to do all of the following:

(1) Enter into contracts as are necessary or proper to carry out the provisions and purposes of this Part, including the authority, with the approval of the Commissioner, to enter into contracts with similar plans of other states for the joint performance of common administrative functions or with persons or other organizations for the performance of administrative functions.

(2) Sue or be sued, including taking any legal actions necessary or proper to recover or collect assessments due the Pool.

(3) Take legal action as necessary to:

a. Avoid the payment of improper claims against the Pool or the coverage provided by or through the Plan.

b. Recover any amounts erroneously or improperly paid by the Plan.

c. Recover any amounts paid by the Pool as a result of mistake of fact or law.

d. Recover other amounts due the Pool.

(4) Establish rates and rate schedules in accordance with this Part.

(5) Issue policies of insurance in accordance with the requirements of this Part.

(6) Appoint appropriate legal, actuarial, and other committees as necessary to provide technical assistance in the operation of the Pool, policy, and other contract design, and any other function within the Pool's authority.

(7) Borrow money to effect the purposes of the Pool. Any notes or other evidence of indebtedness of the Pool not in default are legal investments for insurers and may be carried as admitted assets.

(8) Establish policies, conditions, and procedures for reinsuring risks of participating insurers desiring to issue Pool coverage in their own name. Provision of reinsurance shall not subject the Pool to any of the capital or surplus requirements, if any, otherwise applicable to reinsurers.

(9) Employ and fix the compensation of employees.

(10) Prepare and distribute certificate of eligibility forms and enrollment instruction forms to insurance producers and to the general public.
(11) Provide for reinsurance of risks incurred by the Pool.
(12) Issue additional types of health insurance policies to provide optional coverage, including Medicare supplemental insurance coverage.
(13) Provide for and employ cost containment measures and requirements including preadmission screening, second surgical opinion, concurrent utilization review, disease management, individual case management, and other commonly used benefit plan design features for the purpose of making health insurance coverage offered by the Pool more cost-effective.
(14) Design, utilize, contract, or otherwise arrange for the delivery of cost-effective health care services, including establishing or contracting with preferred provider organizations, health maintenance organizations, and other limited network provider arrangements.
(15) Adopt bylaws, policies, and procedures as may be necessary or convenient for the implementation of this Part and the operation of the Pool.

(f) The Board shall operate the Pool in a manner so that the estimated cost of providing health insurance coverage during any fiscal year is not anticipated to exceed the total income the Pool expects to receive from policy premiums and other revenue available to the Pool. The Board may impose a cap on enrollment or may suspend enrollment for an indefinite period if the Board finds that estimated costs are anticipated to exceed income.

(g) The Board shall make an annual report to the Commissioner, to the Speaker of the House of Representatives, and to the President Pro Tempore of the Senate. The report shall summarize the activities of the Pool in the preceding calendar year, including the net written and earned premiums, benefit plan enrollment, the expense of administration, and the paid and incurred losses.

(h) Neither the Board nor its employees are liable for any obligations of the Pool. There shall be no liability on the part of and no cause of action of any nature shall arise against the Pool or its agents or employees, the Board, or the Commissioner or his representatives for any action taken by them in good faith in the performance of their powers and duties under this Article. The Board may provide in its bylaws or rules for indemnification of, and legal representation for, its members and employees.

(i) The members of the Board shall comply with the provisions of G.S. 14-234 prohibiting conflicts of interest.

"**§ 58-50-255. Administrator.**

(a) The Board shall select through a competitive bidding process one or more authorized insurers or a third-party administrator to administer the Pool. The Board shall evaluate bids submitted based on criteria established by the Board. The criteria shall allow for the comparison of information about each bidding administrator and selection of a Pool Administrator based on at least the following:

(1) Proven ability to handle health insurance coverage to individuals.

(2) Efficiency and timeliness of the claim processing procedures.
(3) Estimated total charges for administering the Pool.
(4) Ability to apply effective cost containment programs and procedures and to administer the Pool in a cost-efficient manner.
(5) Financial condition and stability.

If a member of the Board has submitted a bid to be selected by the Board as Pool Administrator, that bidding member of the Board shall not participate in the selection process or in the Board's final decision on the selection of the Administrator.

(b) The Administrator shall serve for a period specified in the contract between the Pool and the Administrator subject to removal for cause and subject to any terms, conditions, and limitations of the contract between the Pool and the Administrator. At least one year before the expiration of each period of service by an Administrator, the Board shall invite eligible entities, including the current Administrator, to submit bids to serve as the Administrator. Selection of the Administrator for the succeeding period shall be made at least six months before the end of the current period.

(c) The Administrator shall perform such functions relating to the Pool as may be assigned to it, including:

(1) Determination of eligibility.
(2) Payment of claims.
(3) Establishment of a premium billing procedure for collection of premiums from individuals covered under the Pool.
(4) Other necessary functions to assure timely payment of benefits to covered persons under the Pool.

(d) The Administrator shall submit regular reports to the Board regarding the operation of the Pool. The contract between the Board and the Administrator shall specify the frequency, content, and form of the report.

(e) Following the close of each calendar year, the Administrator shall determine net written and earned premiums, the expense of administration, and the paid and incurred losses for the year and report this information to the Board and the Commissioner on a form prescribed by the Commissioner.

(f) The Administrator shall be paid as provided in the contract between the Board and the Administrator.

"**§ 58-50-260. Risk Pool rates and policy forms.**

(a) The Pool shall adopt and modify, as appropriate, rates, rate schedules, rate adjustments, expense allowances, agents' referral fees, claim reserve formulas, and any other actuarial function appropriate to the operation of the Pool. Rates and rate schedules may be adjusted for appropriate factors such as age, sex, and geographic variation in claim cost and shall take into consideration appropriate rating factors in accordance with established actuarial and underwriting practices.

(b) The Pool shall determine the standard risk rate by considering the premium rates charged by other insurers offering health insurance coverage to individuals. The standard risk rate shall be established using reasonable actuarial techniques and shall reflect anticipated experience and expenses for the coverage. Pool rates shall be one

hundred fifty percent (150%) of rates established as applicable for individual standard rates.

(c) The Pool shall provide for premium discounts for covered individuals who are nonsmokers or who are actively participating in a smoking cessation program. Approval of smoking cessation programs, criteria for active participation in smoking cessation programs, and discount rates shall be established by the Board, subject to the approval of the Commissioner.

(d) Provider reimbursement rates under Pool coverage shall be limited to the rates allowed for providers under the Medicare Program.

(e) The Pool shall submit all rates and rate schedules and amendments thereto to the Commissioner for approval, and the Commissioner shall approve the rates and rate schedules before the Pool may use them. The Commissioner, in evaluating the rates and rate schedules, shall consider the factors provided in this section. The Pool shall provide all individuals enrolled in the Pool with at least 45 days notice of any change in Pool rates or rate schedules.

(f) The Pool shall submit all policy forms to the Commissioner for approval, and the Commissioner shall approve the forms before the Pool may use them. Except for any provisions that are specifically treated otherwise under this Part, the provisions of Chapter 58 that apply to benefit plans and policy forms of health insurers generally shall apply to the benefit plans offered and policy forms used by the Pool.

"**§ 58-50-265. Eligibility for Pool coverage.**

(a) Any individual who is and continues to be a resident of this State is eligible for Pool coverage if evidence is provided of:

(1) A notice of rejection or refusal to issue substantially similar health insurance coverage for health reasons by an insurer. A rejection or refusal by an insurer offering only stop-loss, excess loss, or reinsurance coverage with respect to the applicant is not sufficient evidence of eligibility;

(2) An offer to issue health insurance coverage only with a conditional rider that limits coverage for the individual's high-risk medical condition;

(3) A refusal by an insurer to issue health insurance coverage except at a rate exceeding the Pool rate;

(4) A diagnosis of the individual with one of the medical or health conditions listed by the Board in accordance with this section. An individual diagnosed with one or more of these conditions is eligible for Pool coverage without applying for other health insurance coverage;

(5) In the case of a federally defined eligible individual, the individual's maintenance of health insurance coverage, of which the most recent coverage was through an employer-sponsored plan, for the previous 18 months with no gap in coverage greater than 63 days and exhaustion of any available COBRA or State continuation benefits; or

(6) An individual who is legally domiciled in this State and is eligible for the credit for health insurance costs under the Trade Adjustment Assistance Reform Act of 2002, section 35 of the Internal Revenue Code of 1986.

(b) The Board shall adopt a list of medical or health conditions for which a person shall be eligible for Pool coverage without applying for health insurance pursuant to subsection (a) of this section. The Board may amend the list as the Board considers appropriate.

(c) Each dependent of an individual who is eligible for Pool coverage shall also be eligible for Pool coverage.

(d) An individual is not eligible for coverage under the Pool if:

(1) The individual has or obtains health insurance coverage substantially similar to or more comprehensive than a Pool policy, or would be eligible to have coverage if the person elected to obtain it, except that:

a. An individual may maintain other coverage for the period of time the individual is satisfying any preexisting condition waiting period under a Pool policy; and

b. An individual may maintain Pool coverage for the period of time the individual is satisfying a preexisting condition waiting period under another health insurance policy intended to replace the Pool policy.

(2) The individual is determined to be eligible for enrollment in the State Medical Assistance Plan.

(3) The individual has previously terminated Pool coverage unless 12 months have lapsed since the termination, except that this subdivision shall not apply with respect to an applicant who is a federally defined eligible individual or to an applicant eligible for or receiving benefits under the Trade Adjustment Assistance Program.

(4) The individual is an inmate or resident of a public institution, except that this subdivision shall not apply with respect to an applicant who is a federally defined eligible individual.

(5) The individual's premiums are paid for or reimbursed under any government-sponsored program or by any government agency or health care provider, except as an otherwise qualifying full-time employee, or dependent thereof, of a government agency or health care provider. This subdivision shall not apply for individuals receiving benefits under the Trade Adjustment Assistance Program or to individuals receiving premium subsidies made available by the State based on individual income levels.

(6) The individual has in effect on the date Pool coverage takes effect health insurance coverage from an insurer or insurance arrangement.

(e) Coverage under the Pool shall cease:

(1) On the date an individual is no longer a resident of this State.

(2) On the date an individual requests coverage to end.

(3) Upon the death of the covered individual.
(4) On the date State law requires cancellation of the Pool policy.
(5) At the option of the Pool, 30 days after the Pool makes any inquiry concerning the individual's eligibility or residence to which the individual does not reply.
(6) Because the individual has failed to make the payments required under this Part.

(f) Except as provided in subsection (e) of this section, an individual who ceases to meet the eligibility requirements of this section may be terminated at the end of the Pool period for which the necessary premiums have been paid.

"**§ 58-50-270. Unfair referral to Pool.**

It is an unfair trade practice under Article 63 of this Chapter for an insurer, insurance producer, as defined in G.S. 58-33-10(7), or third-party administrator to refer an individual employee to the Pool or arrange for an individual employee to apply to the Pool for the purpose of separating that employee from group health insurance coverage provided in connection with the employee's employment, or for the purpose of separating an individual covered by health insurance offered in the individual market.

"**§ 58-50-275. Minimum Pool benefits.**

(a) The Pool shall offer at least two types of health insurance coverage for individuals eligible under G.S. 58-50-265, including preferred provider organizations with different levels of deductibles and cost-sharing, and at least one choice of a health savings account. The covered services and benefit levels may vary between the types of coverage, but at least two types of coverage must, at a minimum, cover the benefits and services outlined in the National Association of Insurance Commissioners' Model Health Pool for Uninsurable Individuals Act and be consistent with comprehensive coverage generally available to persons who are eligible for health insurance other than Medicare. All health insurance products offered by the Pool shall include disease or case management services.

(b) Health insurance products offered by the Pool shall include not less than one million dollars ($1,000,000) lifetime limit and a sliding scale annual limit of two thousand dollars ($2,000) to five thousand dollars ($5,000) on out-of-pocket expenses. The sliding scale shall be based on family income. The Board shall adjust limitations at least once every five years to reflect changes in the medical component of the Consumer Price Index.

"**§ 58-50-280. Preexisting conditions.**

(a) Except as otherwise provided by law, pool coverage shall exclude charges or expenses incurred during the first 12 months following the effective date of coverage as to any condition for which medical advice, care, or treatment was recommended or received as to such conditions during the 12-month period immediately preceding the effective date of coverage, except that no preexisting condition exclusion shall be applied to a federally defined eligible individual.

(b) Subject to subsection (a) of this section, the preexisting condition exclusions shall be waived to the extent that similar exclusions, if any, have been satisfied under any prior health insurance coverage that was involuntarily terminated, provided that:

(1) Application for Pool coverage is made not later than 63 days following the involuntary termination, and in such case coverage in the Pool shall be effective from the date on which the prior coverage was terminated; and

(2) The applicant is not eligible for continuation or conversion rights that would provide coverage substantially similar to Pool coverage.

"**§ 58-50-285. Nonduplication of benefits.**

(a) The Pool shall be payor of last resort of benefits whenever any other benefit or source of third-party payment is available. Benefits otherwise payable under coverage shall be reduced by all amounts paid or payable through any other health insurance coverage and by all hospital and medical expense benefits paid or payable under any workers' compensation coverage, automobile medical payment, or liability insurance, whether provided on the basis of fault or no-fault, and by any hospital or medical benefits paid or payable under or provided pursuant to any State or federal law or program.

(b) The Pool shall have a cause of action against an eligible person for the recovery of the amount of benefits paid that are not for covered expenses. Benefits due from the Pool may be reduced or refused as a setoff against any amount recoverable under this subsection.

"**§ 58-50-290. Assessments.**

(a) For the purposes of providing the funds necessary to carry out the powers and duties of the Pool, the Board shall assess all insurers at such time and for such amounts as the Board finds necessary. Assessments shall be due in not less than 30 days after prior written notice to the insurers and shall accrue interest at twelve percent (12%) per annum on and after the due date.

(b) Each insurer shall be assessed in an amount not to exceed two dollars ($2.00) per covered individual insured or reinsured by each insurer per month. The assessment will be based on actual and expected losses, actuarially appropriate reserves, and administrative expenses in excess of expected and collected premiums and federal loss reimbursements, if any, received by the Pool.

(c) The Board shall make reasonable efforts designed to ensure that each covered individual is counted only once with respect to any assessment. For that purpose, the Board shall require each insurer that obtains excess or stop-loss insurance to include in its count of covered individuals all individuals whose coverage is insured (including by way of excess or stop-loss coverage) in whole or in part, except that lives covered under the Pool and reinsured or administered by a third-party administrator shall not be included in the count. The Board shall allow a reinsurer to exclude from its number of covered individuals those who have been counted by the primary insurer or by the primary reinsurer or primary excess or stop-loss insurer for the purposes of determining its assessment under this section.

(d) The Board may verify each insurer's assessment based on annual statements and other reports deemed to be necessary by the Board. The Board may use any reasonable method of estimating the number of covered individuals of an insurer if the specific number is unknown.

(e) If assessments and other receipts by the Pool, Board, or administering insurer exceed the actual losses and administrative expenses of the plan, the excess shall be held at interest and used by the Board to offset future losses or to reduce plan premiums. Future losses include reserves for claims incurred but not reported.

(f) The Commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this State of any insurer that fails to pay an assessment. As an alternative, the Commissioner may levy a forfeiture on any insurer that fails to pay an assessment when due. The forfeiture may not exceed five percent (5%) of the unpaid assessment per month, but no forfeiture shall be less than one hundred dollars ($100.00) per month.

"**§ 58-50-295. Complaint procedures.**

An applicant or participant in coverage from the Pool is entitled to have complaints against the Pool reviewed by a grievance committee appointed by the Board. Members of the Board shall not serve on the grievance committee. The grievance process shall comply with G.S. 58-50-62. The grievance committee shall report to the Board after completion of the review of each complaint. The Board shall retain all written complaints regarding the Pool at least until the third anniversary of the date the Pool received the complaint. An applicant or participant may file for external review of the applicant's grievance after having exhausted the Pool's internal grievance procedure. External review, including eligibility determinations, shall be conducted in accordance with Part 4 of this Article.

"**§ 58-50-300. Audit.**

An audit of the Pool shall be conducted annually under the oversight of the State Auditor. The cost of the audit shall be reimbursed to the State Auditor from the Special Reserve for the North Carolina Health Insurance Risk Pool.

"**§ 58-50-305. Taxation.**

The Pool established under this Part is exempt from any and all taxes.

"**§ 58-50-310. Rules.**

The Commissioner may adopt rules, including temporary rules, to implement this Part.

"**§ 58-50-315. Collective action.**

The establishment of rates, forms, or procedures, and any other joint or collective action required by this Part may not be the basis of any legal action or criminal or civil liability or penalty against the Pool or any insurer."

SECTION 1.2. On or before January 1, 2007, the Department of Insurance shall notify the Centers for Medicare and Medicaid Services that the State has established the North Carolina Health Insurance Risk Pool and shall request that the North Carolina Health Insurance Risk Pool be approved as an acceptable "alternative mechanism" under the federal Health Insurance Portability and Accountability Act in accordance with 45 C.F.R. § 148.128(e).

SECTION 1.3. The Board of Directors of the North Carolina Health Insurance Risk Pool, as appointed under Section 1 of this act, shall monitor methods of financing the Pool to ensure a stable funding source and allow for its continued operation. This monitoring shall include supplementary sources of funding, such as

funds obtained from public and private not-for-profit foundations, insurer assessments, or other appropriate and available State or non-State funds. The Board shall also review on a regular basis:

(1) The number of individuals in this State who are uninsured as of a date certain because of high-risk conditions.

(2) The number of uninsured individuals who would qualify for coverage under the Pool based on G.S. 58-50-265 and its Plan of Operation.

(3) The cost of coverage under each of the health insurance plans developed by the Board, including administrative costs.

(4) The extent to which assessments meet or exceed amounts necessary for coverage and Board operations.

(5) The status of a request by the State to the Centers for Medicare and Medicaid Services for approval of the North Carolina Health Insurance Risk Pool to be considered an acceptable "alternative mechanism" under the federal Health Insurance Portability and Accountability Act in accordance with 45 C.F.R. § 148.128(e).

The Board shall report its findings and recommendations to the General Assembly on March 1, 2007, and annually thereafter.

SECTION 1.4. The North Carolina Health Insurance Risk Pool Administrator shall study methods for encouraging healthy behaviors and report its findings to the Board of Directors of the Pool and to the General Assembly not later than one year after initial implementation of the Pool.

SECTION 1.5. Notwithstanding G.S. 58-50-280(a), individuals enrolling in the North Carolina Health Insurance Risk Pool within six months of the date that enrollment into the Pool first begins shall be subject to a six-month preexisting condition waiting period.

SECTION 2. There is established in the Department of Insurance the Reserve for the North Carolina Health Insurance Risk Pool ("Reserve"). Of the funds appropriated to the Department of Insurance for fiscal year 2006-2007, the sum of one million dollars ($1,000,000) is transferred from the Volunteer Safety Workers' Compensation Fund ("Fund") to the Reserve for the 2006-2007 fiscal year. These funds may be used to support one additional full-time position in the Department to carry out the Department's responsibilities under the North Carolina Health Insurance Risk Pool, and shall be allocated for the reasonable expenses of the Board in conducting its duties under Section 1 of this act that are incurred on or before July 1, 2008. The Reserve is subject to the Executive Budget Act, except that Article 3C of Chapter 143 of the General Statutes does not apply to G.S. 58-50-250(e).

Transfer of the funds from the Fund to the Reserve is contingent upon successful application for and award of federal grant funds to implement the NC Health Insurance Risk Pool. Federal funds received for this purpose shall be deposited to the Reserve. Upon receipt of the federal funds, the Department of Insurance shall, from Reserve funds, reimburse the Volunteer Safety Workers' Compensation Fund in the amount of one million dollars ($1,000,000). It is the intent of the General Assembly that in the

event the State is not awarded the federal funds anticipated, the Volunteer Safety Workers' Compensation Fund shall be held harmless.

SECTION 3. Section 2 of this act becomes effective July 1, 2006. The remainder of this act is effective when it becomes law. Enrollment in the North Carolina Health Insurance Risk Pool shall commence no later than January 1, 2008.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H **2**

HOUSE BILL 1895
Committee Substitute Favorable 6/12/06

Short Title: Establish High-Risk Pool. (Public)

Sponsors:

Referred to:

May 11, 2006

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE NORTH CAROLINA HEALTH INSURANCE RISK POOL AND TO APPROPRIATE FUNDS THEREFOR.

The General Assembly of North Carolina enacts:

SECTION 1.1. Article 50 of Chapter 58 of the General Statutes is amended by adding a new Part to read:

"Part 7. North Carolina Health Insurance Risk Pool.

"**§ 58-50-245. Definitions.**

For the purposes of this Part:

(1) "Administrator" means the Pool Administrator selected by the Board in accordance with this Part.

(2) "Benefit plan" means coverage offered by the Pool to eligible individuals.

(3) "Board" means the Board of Directors of the Pool.

(4) "Covered person" means any individual resident of this State, excluding dependents, who is eligible to receive health benefits from any insurer.

(5) "Church plan" has the meaning given that term under section 3(33) of the Employee Retirement Income Security Act of 1974.

(6) "Creditable coverage" has the same meaning as prescribed in G.S. 58-68-30(c)(1).

(7) "Dependent" means a resident spouse or unmarried child under the age of 19 years, a child who is a full-time student under the age of 23 years and who is financially dependent upon the parent, a child who is over 18 years of age and for whom a person may be obligated to pay child support, or a child of any age who is disabled and dependent upon the parent.

(8) "Family member" means a parent, grandparent, brother, sister, or child of a dependent residing with the insured.

(9) "Federally defined eligible individual" has the same meaning as "eligible individual" as prescribed in G.S. 58-68-60(b).

(10) "Governmental plan" has the same meaning as prescribed in G.S. 58-68-60(h)(2).

(11) "Group health plan" means an employee welfare benefit plan as defined in section 3(1) of the Employee Retirement Income Security Act of 1974 to the extent that the plan provides medical care, including items and services paid for as medical care to employees or their dependents, as defined under the terms of the plan directly or through insurance, reimbursement, or otherwise.

(12) "Health insurance coverage" shall have the same meaning as prescribed in G.S. 58-68-25(a)(5). Health insurance coverage does not include benefits described in G.S. 58-68-25(b).

(13) "Insurance arrangement" means a plan, program, contract, or other arrangement through which health care services are provided by an employer to its officers or employees but does not include health care services covered through an insurer.

(14) "Insured" means an individual who is eligible to receive benefits from the Pool. The term "insured" includes dependents and family members, as applicable.

(15) "Insurer" means any entity that provides health insurance coverage in this State. For the purposes of this Part, insurer includes an insurance company, a hospital or medical service corporation, a health maintenance organization, a multiple employer welfare arrangement, a third-party administrator or claims processor, an administrative service organization, or any other nongovernmental entity providing a health benefit plan subject to State insurance regulation.

(16) "Medical care" means amounts paid for:

a. The diagnosis, cure, mitigation, treatment, or prevention of disease, or amounts paid for the purpose of affecting any structure or function of the body;

b. Transportation primarily for and essential to medical care referred to in sub-subdivision a. of this subdivision; and

c. Insurance covering medical care referred to in sub-subdivisions a. and b. of this subdivision.

(17) "Plan of Operation" means the articles, bylaws, and operating rules and procedures adopted by the Board in accordance with this Part.

(18) "Pool" means the North Carolina Health Insurance Risk Pool.

(19) "Resident" means an individual who:

a. Has been legally domiciled in this State for a period of at least 30 days, except that for a federally defined eligible individual, there shall not be a 30-day requirement;

b. Is legally domiciled in this State on the date of application to the Pool and who is eligible for enrollment in the Pool as a

result of the Health Insurance Portability and Accountability Act of 1996; or

c. Is legally domiciled in this State on the date of application to the Pool and is eligible for the credit for health insurance costs under section 35 of the Internal Revenue Code of 1986.

(20) "Significant break in coverage" means a period of 63 consecutive days during all of which the individual does not have any creditable coverage, except that neither a waiting period nor an affiliation period is taken into account in determining a significant break in coverage.

(21) "Trade Adjustment Assistance Program" (TAA) means Title II of the Trade Act of 2002, P.L. 107-210.

"**§ 58-50-250. Risk Pool established; board of directors; plan of operation.**

(a) High-Risk Pool Established. – There is hereby created a nonprofit entity to be known as the North Carolina Health Insurance Risk Pool. The Pool shall operate under the supervision and control of the Board of Directors of the Pool.

(b) Board of Directors Appointment; Membership. – The Board of Directors of the North Carolina Health Insurance Risk Pool shall consist of the Commissioner of Insurance, who shall serve as an ex officio nonvoting member of the Board, and nine members appointed as follows:

(1) Two members of the general public who are not employed by or affiliated with an insurance company or plan, group hospital, or other health care provider, and can reasonably be expected to qualify for coverage in the Pool. Members of the general public include individuals whose only affiliation with health insurance or health care coverage is as a covered member. The two members of the general public shall be appointed as follows:

a. One member upon the recommendation of the President Pro Tempore of the Senate.

b. One member upon the recommendation of the Speaker of the House of Representatives.

(2) Seven members appointed by the Commissioner of Insurance, as follows:

a. Two who are insurers, at least one of whom covers the largest number of persons in the State.

b. One who is licensed to sell health insurance in this State.

c. Two who represent the medical provider community, one as recommended by the North Carolina Medical Society and one as recommended by the North Carolina Hospital Association.

d. One who represents small business, as recommended by the North Carolina Citizens for Business and Industry.

e. One who is either a health policy researcher or a health economist with experience relating to the operation of high-risk insurance pools.

(c) Board of Directors; Terms of Appointment; Vacancies; Compensation. – The initial Board members shall be appointed as follows: three of the members to serve a term of three years; three of the members to serve a term of one year; and three of the members to serve a term of two years. Subsequent Board members shall serve for terms of three years. A Board member's term shall continue until the member's successor is appointed. The Commissioner shall appoint a chair to serve for the initial two years of the Plan's operation. Subsequent chairs shall be elected by a majority vote of the Board members and shall serve for two-year terms. The Commissioner shall fill vacancies in membership and may remove members from the Board for cause. Board members shall not be compensated in their capacity as Board members but shall be reimbursed for reasonable expenses incurred in the necessary performance of their duties.

(d) Plan of Operation. – The Board shall submit to the Commissioner a Plan of Operation for the Pool and any amendments necessary or suitable to assure the fair, reasonable, and equitable administration of the Plan of Operation. The Plan of Operation shall become effective upon approval in writing by the Commissioner consistent with the date on which the coverage under this Part must be made available. If the Board fails to submit a suitable Plan of Operation within 180 days after the appointment of the Board of Directors, or at any time thereafter fails to submit suitable amendments to the Plan of Operation, the Commissioner shall adopt temporary rules necessary or advisable to effectuate the provisions of this section. The rules shall continue in force until modified by the Commissioner or superseded by a Plan of Operation submitted by the Board and approved by the Commissioner. The Plan of Operation shall:

(1) Establish procedures for operation of the Pool.

(2) Establish procedures for selecting a Pool Administrator in accordance with G.S. 58-50-255.

(3) Establish procedures to create a fund for administrative expenses, which shall be managed by the Board.

(4) Establish procedures for the collection, handling, disbursing, accounting, assessing and auditing of assets, monies, and claims of the Pool and the Pool Administrator.

(5) Develop and implement a program to publicize the existence of the Pool, the eligibility requirements, and procedures for enrollment, availability of State premium subsidies, and to maintain public awareness of the Pool.

(6) Establish procedures under which applicants and participants may have grievances reviewed by a grievance committee appointed by the Board in accordance with G.S. 58-50-295.

(7) Establish procedures for identifying and confirming income levels of applicants for Pool coverage who are eligible to receive a State premium subsidy, if a State premium subsidy is available.

(8) Provide for other matters as may be necessary and proper for the execution of the Board's powers, duties, and obligations under this Part.

(e) The Pool shall have the general powers and authority granted under the laws of this State to health insurers and the specific authority to do all of the following:

(1) Enter into contracts as are necessary or proper to carry out the provisions and purposes of this Part, including the authority, with the approval of the Commissioner, to enter into contracts with similar plans of other states for the joint performance of common administrative functions or with persons or other organizations for the performance of administrative functions.

(2) Sue or be sued, including taking any legal actions necessary or proper to recover or collect assessments due the Pool.

(3) Take legal action as necessary to:

a. Avoid the payment of improper claims against the Pool or the coverage provided by or through the Plan.

b. Recover any amounts erroneously or improperly paid by the Plan.

c. Recover any amounts paid by the Pool as a result of mistake of fact or law.

d. Recover other amounts due the Pool.

(4) Establish rates and rate schedules in accordance with this Part.

(5) Issue policies of insurance in accordance with the requirements of this Part.

(6) Appoint appropriate legal, actuarial, and other committees as necessary to provide technical assistance in the operation of the Pool, policy, and other contract design, and any other function within the Pool's authority.

(7) Borrow money to effect the purposes of the Pool. Any notes or other evidence of indebtedness of the Pool not in default are legal investments for insurers and may be carried as admitted assets.

(8) Establish policies, conditions, and procedures for reinsuring risks of participating insurers desiring to issue Pool coverage in their own name. Provision of reinsurance shall not subject the Pool to any of the capital or surplus requirements, if any, otherwise applicable to reinsurers.

(9) Employ and fix the compensation of employees.

(10) Prepare and distribute certificate of eligibility forms and enrollment instruction forms to insurance producers and to the general public.

(11) Provide for reinsurance of risks incurred by the Pool.

(12) Issue additional types of health insurance policies to provide optional coverage, including Medicare supplemental insurance coverage.

(13) Provide for and employ cost containment measures and requirements including preadmission screening, second surgical opinion, concurrent utilization review, disease management, individual case management, and other commonly used benefit plan design features for the purpose

of making health insurance coverage offered by the Pool more cost-effective.

(14) Design, utilize, contract, or otherwise arrange for the delivery of cost-effective health care services, including establishing or contracting with preferred provider organizations, health maintenance organizations, and other limited network provider arrangements.

(15) Adopt bylaws, policies, and procedures as may be necessary or convenient for the implementation of this Part and the operation of the Pool.

(f) The Board shall operate the Pool in a manner so that the estimated cost of providing health insurance coverage during any fiscal year is not anticipated to exceed the total income the Pool expects to receive from policy premiums and other revenue available to the Pool. The Board may impose a cap on enrollment or may suspend enrollment for an indefinite period if the Board finds that estimated costs are anticipated to exceed income.

(g) The Board shall make an annual report to the Commissioner, to the Speaker of the House of Representatives, and to the President Pro Tempore of the Senate. The report shall summarize the activities of the Pool in the preceding calendar year, including the net written and earned premiums, benefit plan enrollment, the expense of administration, and the paid and incurred losses.

(h) Neither the Board nor its employees are liable for any obligations of the Pool. There shall be no liability on the part of and no cause of action of any nature shall arise against the Pool or its agents or employees, the Board, or the Commissioner or his representatives for any action taken by them in good faith in the performance of their powers and duties under this Article. The Board may provide in its bylaws or rules for indemnification of, and legal representation for, its members and employees.

(i) The members of the Board shall comply with the provisions of G.S. 14-234 prohibiting conflicts of interest.

"**§ 58-50-255. Administrator.**

(a) The Board shall select through a competitive bidding process one or more authorized insurers or a third-party administrator to administer the Pool. The Board shall evaluate bids submitted based on criteria established by the Board. The criteria shall allow for the comparison of information about each bidding administrator and selection of a Pool Administrator based on at least the following:

(1) Proven ability to handle health insurance coverage to individuals.

(2) Efficiency and timeliness of the claim processing procedures.

(3) Estimated total charges for administering the Pool.

(4) Ability to apply effective cost containment programs and procedures and to administer the Pool in a cost-efficient manner.

(5) Financial condition and stability.

If a member of the Board has submitted a bid to be selected by the Board as Pool Administrator, that bidding member of the Board shall not participate in the selection process or in the Board's final decision on the selection of the Administrator.

(b) The Administrator shall serve for a period specified in the contract between the Pool and the Administrator subject to removal for cause and subject to any terms, conditions, and limitations of the contract between the Pool and the Administrator. At least one year before the expiration of each period of service by an Administrator, the Board shall invite eligible entities, including the current Administrator, to submit bids to serve as the Administrator. Selection of the Administrator for the succeeding period shall be made at least six months before the end of the current period.

(c) The Administrator shall perform such functions relating to the Pool as may be assigned to it, including:

(1) Determination of eligibility.

(2) Payment of claims.

(3) Establishment of a premium billing procedure for collection of premiums from individuals covered under the Pool.

(4) Other necessary functions to assure timely payment of benefits to covered persons under the Pool.

(d) The Administrator shall submit regular reports to the Board regarding the operation of the Pool. The contract between the Board and the Administrator shall specify the frequency, content, and form of the report.

(e) Following the close of each calendar year, the Administrator shall determine net written and earned premiums, the expense of administration, and the paid and incurred losses for the year and report this information to the Board and the Commissioner on a form prescribed by the Commissioner.

(f) The Administrator shall be paid as provided in the contract between the Board and the Administrator.

"**§ 58-50-260. Risk Pool rates and policy forms.**

(a) The Pool shall adopt and modify, as appropriate, rates, rate schedules, rate adjustments, expense allowances, agents' referral fees, claim reserve formulas, and any other actuarial function appropriate to the operation of the Pool. Rates and rate schedules may be adjusted for appropriate factors such as age, sex, and geographic variation in claim cost and shall take into consideration appropriate rating factors in accordance with established actuarial and underwriting practices.

(b) The Pool shall determine the standard risk rate by considering the premium rates charged by other insurers offering health insurance coverage to individuals. The standard risk rate shall be established using reasonable actuarial techniques and shall reflect anticipated experience and expenses for the coverage. Pool rates shall be one hundred fifty percent (150%) of rates established as applicable for individual standard rates.

(c) The Pool shall provide for premium discounts for covered individuals who are nonsmokers or who are actively participating in a smoking cessation program. Approval of smoking cessation programs, criteria for active participation in smoking cessation programs, and discount rates shall be established by the Board, subject to the approval of the Commissioner.

(d) Provider reimbursement rates under Pool coverage shall be limited to the rates allowed for providers under the Medicare Program.

(e) The Pool shall submit all rates and rate schedules and amendments thereto to the Commissioner for approval, and the Commissioner shall approve the rates and rate schedules before the Pool may use them. The Commissioner, in evaluating the rates and rate schedules, shall consider the factors provided in this section. The Pool shall provide all individuals enrolled in the Pool with at least 45 days notice of any change in Pool rates or rate schedules.

(f) The Pool shall submit all policy forms to the Commissioner for approval, and the Commissioner shall approve the forms before the Pool may use them. Except for any provisions that are specifically treated otherwise under this Part, the provisions of Chapter 58 that apply to benefit plans and policy forms of health insurers generally shall apply to the benefit plans offered and policy forms used by the Pool.

"**§ 58-50-265. Eligibility for Pool coverage.**

(a) Any individual who is and continues to be a resident of this State is eligible for Pool coverage if evidence is provided of:

(1) A notice of rejection or refusal to issue substantially similar health insurance coverage for health reasons by an insurer. A rejection or refusal by an insurer offering only stop-loss, excess loss, or reinsurance coverage with respect to the applicant is not sufficient evidence of eligibility;

(2) An offer to issue health insurance coverage only with a conditional rider that limits coverage for the individual's high-risk medical condition;

(3) A refusal by an insurer to issue health insurance coverage except at a rate exceeding the Pool rate;

(4) A diagnosis of the individual with one of the medical or health conditions listed by the Board in accordance with this section. An individual diagnosed with one or more of these conditions is eligible for Pool coverage without applying for other health insurance coverage;

(5) In the case of a federally defined eligible individual, the individual's maintenance of health insurance coverage, of which the most recent coverage was through an employer-sponsored plan, for the previous 18 months with no gap in coverage greater than 63 days and exhaustion of any available COBRA or State continuation benefits; or

(6) An individual who is legally domiciled in this State and is eligible for the credit for health insurance costs under the Trade Adjustment Assistance Reform Act of 2002, section 35 of the Internal Revenue Code of 1986.

(b) The Board shall adopt a list of medical or health conditions for which a person shall be eligible for Pool coverage without applying for health insurance pursuant to subsection (a) of this section. The Board may amend the list as the Board considers appropriate.

(c) Each dependent of an individual who is eligible for Pool coverage shall also be eligible for Pool coverage.

(d) An individual is not eligible for coverage under the Pool if:

(1) The individual has or obtains health insurance coverage substantially similar to or more comprehensive than a Pool policy, or would be eligible to have coverage if the person elected to obtain it, except that:

a. An individual may maintain other coverage for the period of time the individual is satisfying any preexisting condition waiting period under a Pool policy; and

b. An individual may maintain Pool coverage for the period of time the individual is satisfying a preexisting condition waiting period under another health insurance policy intended to replace the Pool policy.

(2) The individual is determined to be eligible for enrollment in the State Medical Assistance Plan.

(3) The individual has previously terminated Pool coverage unless 12 months have lapsed since the termination, except that this subdivision shall not apply with respect to an applicant who is a federally defined eligible individual or to an applicant eligible for or receiving benefits under the Trade Adjustment Assistance Program.

(4) The individual is an inmate or resident of a public institution, except that this subdivision shall not apply with respect to an applicant who is a federally defined eligible individual.

(5) The individual's premiums are paid for or reimbursed under any government-sponsored program or by any government agency or health care provider, except as an otherwise qualifying full-time employee, or dependent thereof, of a government agency or health care provider. This subdivision shall not apply for individuals receiving benefits under the Trade Adjustment Assistance Program or to individuals receiving premium subsidies made available by the State based on individual income levels.

(6) The individual has in effect on the date Pool coverage takes effect health insurance coverage from an insurer or insurance arrangement.

(e) Coverage under the Pool shall cease:

(1) On the date an individual is no longer a resident of this State.

(2) On the date an individual requests coverage to end.

(3) Upon the death of the covered individual.

(4) On the date State law requires cancellation of the Pool policy.

(5) At the option of the Pool, 30 days after the Pool makes any inquiry concerning the individual's eligibility or residence to which the individual does not reply.

(6) Because the individual has failed to make the payments required under this Part.

(f) Except as provided in subsection (e) of this section, an individual who ceases to meet the eligibility requirements of this section may be terminated at the end of the Pool period for which the necessary premiums have been paid.

"**§ 58-50-270. Unfair referral to Pool.**

It is an unfair trade practice under Article 63 of this Chapter for an insurer, insurance producer, as defined in G.S. 58-33-10(7), or third-party administrator to refer an individual employee to the Pool or arrange for an individual employee to apply to the Pool for the purpose of separating that employee from group health insurance coverage provided in connection with the employee's employment, or for the purpose of separating an individual covered by health insurance offered in the individual market.

"**§ 58-50-275. Minimum Pool benefits.**

(a) The Pool shall offer at least two types of health insurance coverage for individuals eligible under G.S. 58-50-265, including preferred provider organizations with different levels of deductibles and cost-sharing, and at least one choice of a health savings account. The covered services and benefit levels may vary between the types of coverage, but at least two types of coverage must, at a minimum, cover the benefits and services outlined in the National Association of Insurance Commissioners' Model Health Pool for Uninsurable Individuals Act and be consistent with comprehensive coverage generally available to persons who are eligible for health insurance other than Medicare. All health insurance products offered by the Pool shall include disease or case management services.

(b) Health insurance products offered by the Pool shall include not less than one million dollars ($1,000,000) lifetime limit and a sliding scale annual limit of two thousand dollars ($2,000) to five thousand dollars ($5,000) on out-of-pocket expenses. The sliding scale shall be based on family income. The Board shall adjust limitations at least once every five years to reflect changes in the medical component of the Consumer Price Index.

"**§ 58-50-280. Preexisting conditions.**

(a) Except as otherwise provided by law, pool coverage shall exclude charges or expenses incurred during the first 12 months following the effective date of coverage as to any condition for which medical advice, care, or treatment was recommended or received as to such conditions during the 12-month period immediately preceding the effective date of coverage, except that no preexisting condition exclusion shall be applied to a federally defined eligible individual.

(b) Subject to subsection (a) of this section, the preexisting condition exclusions shall be waived to the extent that similar exclusions, if any, have been satisfied under any prior health insurance coverage that was involuntarily terminated, provided that:

(1) Application for Pool coverage is made not later than 63 days following the involuntary termination, and in such case coverage in the Pool shall be effective from the date on which the prior coverage was terminated; and

(2) The applicant is not eligible for continuation or conversion rights that would provide coverage substantially similar to Pool coverage.

"**§ 58-50-285. Nonduplication of benefits.**

(a) The Pool shall be payor of last resort of benefits whenever any other benefit or source of third-party payment is available. Benefits otherwise payable under coverage shall be reduced by all amounts paid or payable through any other health

insurance coverage and by all hospital and medical expense benefits paid or payable under any workers' compensation coverage, automobile medical payment, or liability insurance, whether provided on the basis of fault or no-fault, and by any hospital or medical benefits paid or payable under or provided pursuant to any State or federal law or program.

(b) The Pool shall have a cause of action against an eligible person for the recovery of the amount of benefits paid that are not for covered expenses. Benefits due from the Pool may be reduced or refused as a setoff against any amount recoverable under this subsection.

"**§ 58-50-290. Assessments.**

(a) For the purposes of providing the funds necessary to carry out the powers and duties of the Pool, the Board shall assess all insurers at such time and for such amounts as the Board finds necessary. Assessments shall be due in not less than 30 days after prior written notice to the insurers and shall accrue interest at twelve percent (12%) per annum on and after the due date.

(b) Each insurer shall be assessed in an amount not to exceed two dollars ($2.00) per covered individual insured or reinsured by each insurer per month. The assessment will be based on actual and expected losses, actuarially appropriate reserves, and administrative expenses in excess of expected and collected premiums and federal loss reimbursements, if any, received by the Pool.

(c) The Board shall make reasonable efforts designed to ensure that each covered individual is counted only once with respect to any assessment. For that purpose, the Board shall require each insurer that obtains excess or stop-loss insurance to include in its count of covered individuals all individuals whose coverage is insured (including by way of excess or stop-loss coverage) in whole or in part, except that lives covered under the Pool and reinsured or administered by a third-party administrator shall not be included in the count. The Board shall allow a reinsurer to exclude from its number of covered individuals those who have been counted by the primary insurer or by the primary reinsurer or primary excess or stop-loss insurer for the purposes of determining its assessment under this section.

(d) The Board may verify each insurer's assessment based on annual statements and other reports deemed to be necessary by the Board. The Board may use any reasonable method of estimating the number of covered individuals of an insurer if the specific number is unknown.

(e) If assessments and other receipts by the Pool, Board, or administering insurer exceed the actual losses and administrative expenses of the plan, the excess shall be held at interest and used by the Board to offset future losses or to reduce plan premiums. Future losses include reserves for claims incurred but not reported.

(f) The Commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this State of any insurer that fails to pay an assessment. As an alternative, the Commissioner may levy a forfeiture on any insurer that fails to pay an assessment when due. The forfeiture may not exceed five percent (5%) of the unpaid assessment per month, but no forfeiture shall be less than one hundred dollars ($100.00) per month.

"**§ 58-50-295. Complaint procedures.**

An applicant or participant in coverage from the Pool is entitled to have complaints against the Pool reviewed by a grievance committee appointed by the Board. Members of the Board shall not serve on the grievance committee. The grievance process shall comply with G.S. 58-50-62. The grievance committee shall report to the Board after completion of the review of each complaint. The Board shall retain all written complaints regarding the Pool at least until the third anniversary of the date the Pool received the complaint. An applicant or participant may file for external review of the applicant's grievance after having exhausted the Pool's internal grievance procedure. External review, including eligibility determinations, shall be conducted in accordance with Part 4 of this Article.

"**§ 58-50-300. Audit.**

An audit of the Pool shall be conducted annually under the oversight of the State Auditor. The cost of the audit shall be reimbursed to the State Auditor from the Special Reserve for the North Carolina Health Insurance Risk Pool.

"**§ 58-50-305. Taxation.**

The Pool established under this Part is exempt from any and all taxes.

"**§ 58-50-310. Rules.**

The Commissioner may adopt rules, including temporary rules, to implement this Part.

"**§ 58-50-315. Collective action.**

The establishment of rates, forms, or procedures, and any other joint or collective action required by this Part may not be the basis of any legal action or criminal or civil liability or penalty against the Pool or any insurer."

SECTION 1.2. On or before January 1, 2007, the Department of Insurance shall notify the Centers for Medicare and Medicaid Services that the State has established the North Carolina Health Insurance Risk Pool and shall request that the North Carolina Health Insurance Risk Pool be approved as an acceptable "alternative mechanism" under the federal Health Insurance Portability and Accountability Act in accordance with 45 C.F.R. § 148.128(e).

SECTION 1.3. The Board of Directors of the North Carolina Health Insurance Risk Pool, as appointed under Section 1 of this act, shall monitor methods of financing the Pool to ensure a stable funding source and allow for its continued operation. This monitoring shall include supplementary sources of funding, such as funds obtained from public and private not-for-profit foundations, insurer assessments, or other appropriate and available State or non-State funds. The Board shall also review on a regular basis:

(1) The number of individuals in this State who are uninsured as of a date certain because of high-risk conditions.

(2) The number of uninsured individuals who would qualify for coverage under the Pool based on G.S. 58-50-265 and its Plan of Operation.

(3) The cost of coverage under each of the health insurance plans developed by the Board, including administrative costs.

(4) The extent to which assessments meet or exceed amounts necessary for coverage and Board operations.

(5) The status of a request by the State to the Centers for Medicare and Medicaid Services for approval of the North Carolina Health Insurance Risk Pool to be considered an acceptable "alternative mechanism" under the federal Health Insurance Portability and Accountability Act in accordance with 45 C.F.R. § 148.128(e).

The Board shall report its findings and recommendations to the General Assembly on March 1, 2007, and annually thereafter.

SECTION 1.4. The North Carolina Health Insurance Risk Pool Administrator shall study methods for encouraging healthy behaviors and report its findings to the Board of Directors of the Pool and to the General Assembly not later than one year after initial implementation of the Pool.

SECTION 1.5. The Board of Directors of the Pool shall apply for grant funds available from the federal government to help support the implementation and ongoing costs of operating a high-risk pool. If federal funds are available for purposes for which funds were appropriated in this act from the General Fund, such federal funds shall be used to reimburse the General Fund, to the maximum extent allowable, for amounts appropriated for this purpose.

SECTION 1.6. Notwithstanding G.S. 58-50-280(a), individuals enrolling in the North Carolina Health Insurance Risk Pool within six months of the date that enrollment into the Pool first begins shall be subject to a six-month preexisting condition waiting period.

SECTION 2.1. There is appropriated from the General Fund to the Department of Insurance the sum of seventy-eight thousand nine hundred nineteen dollars ($78,919) for the 2006-2007 fiscal year. These funds shall be used to support one additional full-time position in the Department to carry out the Department's responsibilities under the North Carolina Health Insurance Risk Pool. It is the intent of the General Assembly that funding for this purpose shall become part of the continuation budget of the Department of Insurance.

SECTION 2.2. There is appropriated from the General Fund to the Department of Insurance the sum of one million dollars ($1,000,000) for the 2006-2007 fiscal year. These funds shall be placed in a Special Reserve for the North Carolina Health Insurance Risk Pool in the Department of Insurance and shall be allocated for the reasonable expenses of the Board in conducting its duties under Section 1 of this act that are incurred on or before July 1, 2008. The Special Reserve is subject to the Executive Budget Act, except that Article 3C of Chapter 143 of the General Statutes does not apply to G.S. 58-50-250(e).

SECTION 3. Sections 2.1 and 2.2 of this act become effective July 1, 2006. The remainder of this act is effective when it becomes law. Enrollment in the North Carolina Health Insurance Risk Pool shall commence no later than January 1, 2008.

HOUSE BILL 1895: Establish High-Risk Pool

BILL ANALYSIS

Committee:	House Finance	**Date:**	July 5, 2006
Introduced by:	Reps. Insko, England, Nye, Wright	**Summary by:**	Ben Popkin
Version:	PCS to Second Edition H1895-CSRD		Committee Counsel

SUMMARY: ***House Bill 1895 would establish the North Carolina Health Insurance Risk Pool, the purpose of which would be to enable individuals with high-risk health conditions to obtain health insurance at premium rates that are more affordable than currently available. Pool financing would be achieved through a combination of premiums and assessments with an initial State appropriation to fund Board operating expenses and Pool start-up costs. House Bill 1895 is a recommendation of the House Select Committee on Health Care.***

[As introduced, this bill was identical to S1681, as introduced by Sen. Purcell, which is currently in Senate Appropriations/Base Budget.]

Sections of the act appropriating funds to the Department of Insurance and to the Special Reserve for the North Carolina Health Insurance Risk Pool would become effective July 1, 2006. The remainder of the act would be effective when it becomes law and enrollment would commence no later than January 1, 2008.

The Proposed Committee Substitute to House Bill 1895 would make the following changes to earlier drafts of this bill: Insurer now includes the Teachers' and State Employees' Medical Plan. The PCS would also eliminate Board of Directors applying for grant funds by establishing in the Department of Insurance the Reserve for NC Health Insurance Risk Pool. Contingent upon successful application and award of grant funds to implement NC Health Insurance Risk Pool, $1,000,000 would be transferred from the Volunteer Safety Workers' Compensation Fund to the Reserve to support an additional staff person and other reasonable expenses of the Board..

BILL ANALYSIS:

House Bill 1895 would create a new Part 7 of Article 50 of Chapter 58 of the General Statutes that would create the North Carolina Health Insurance Risk Pool. The Pool would be a nonprofit entity subject to oversight of the Board of Directors of the Pool and administered by one or more insurers or a third-party administrator selected by the Board through a competitive bidding process. The Pool would operate according to a Plan of Operation developed by the Board and approved by the Commissioner of Insurance.

Plan of Operation for the Pool – The act would specify the content of the Board of Directors' Plan of Operation for the Pool and would authorize the Pool to perform all functions necessary to establish and administer the Pool[1]. The Board would be required to submit a Plan of Operation for the Commissioner's approval and to submit an annual report to the Commissioner, to the Speaker of the House of Representatives, and to the President Pro Tempore of the Senate regarding earned premiums, plan enrollment, administrative expenses, and losses. The Board would be authorized to cap or suspend enrollment if expenses were anticipated to exceed available funds.

[1] Proposed G.S. 58-50-250.

Eligibility and Exclusions*[2]*:

- An individual who is a resident of the State would be eligible for Pool coverage if evidence is provided of:
  - a notice of rejection from an insurer to provide substantially similar health insurance because of the individual's health;
  - an offer to issue insurance only with a conditional rider limiting coverage of the individual's high-risk condition;
  - refusal by an insurer to issue insurance except at a rate exceeding the Pool rate;
  - a diagnosis of the individual with of one of the medical or health conditions listed by the Board;
  - the individual's maintenance of health insurance coverage under federal criteria without a significant break in coverage and the exhaustion of COBRA or state continuation benefits;
  - the individual's legal domicile in State and eligibility for health insurance costs under the Trade Adjustment Assistance Reform Act of 2002; or
  - the individual's status as a dependent of an individual eligible for Pool coverage.

- An individual would be excluded from Pool coverage if:
  - they have health insurance coverage substantially similar to that offered by Pool (with the exception of coverage during preexisting condition waiting period);
  - they are eligible for enrollment in the State Medical Assistance Plan;
  - they have terminated Pool coverage within the past 12 months;
  - they have reached the lifetime maximum benefit ceiling;
  - they are an inmate or resident of a public institution;
  - they have their premiums paid by a government-sponsored program or government agency or health care provider; or
  - they have health insurance coverage from an insurer or insurance arrangement on the date Pool coverage takes effect.

Pool Administration, Rates and Preexisting Conditions – The Board would select a Pool administrator through a competitive bidding process applying criteria set forth in statute and otherwise established by the Board[3]. The Pool would establish risk rates of 150% of rates established by other health insurers as applicable for individual standard risks[4]. The Pool would offer at least two types of coverage including preferred provider organizations with different deductible levels and cost sharing and at least one choice of a health savings account. At least two types of coverage must, at a minimum, provide benefits outlined in the National Association of Insurance Commissioners' Model Health Plan for Uninsurable Individuals Act and be consistent with comprehensive health insurance coverage generally available[5].

Insurance products offered by the Pool would include a lifetime benefit limit of not less than one million dollars and a sliding scale annual limit on out-of-pocket expenses (from two to five thousand dollars, based on family income) [6]. During the first 12 months of coverage, the Pool would not cover health

[2] Proposed G.S. 58-50-265.
[3] Proposed G.S. 58-50-255.
[4] Proposed G.S. 58-50-260.
[5] Proposed G.S. 58-50-275.
[6] Proposed G.S. 58-50-275(b).

conditions existing within 12 months prior to coverage (except for federally defined eligible individuals)[7]. For individuals enrolling into the Pool during the first six months that enrollment is made available, the preexisting condition waiting period would be reduced to six months. The Pool would allow for a waiver of exclusion where similar exclusions have been satisfied under another health insurance plan, and coverage lapsed for no more than 63 days and the applicant was ineligible for substantially similar continuation insurance.

Pool Financing, Complaint Procedures and Miscellaneous Provisions – The Board would assess insurers in the amount deemed necessary to fulfill the Board's duties[8]. Each insurer's assessment would not exceed $2 per covered individual insured or reinsured by the insurer per month. After successful application and award of grant funds to implement NC Health Insurance Risk Pool, $1,000,000 would be transferred from the Volunteer Safety Workers' Compensation Fund to the Reserve to support an additional staff person and other reasonable expenses of the Board. A grievance committee appointed by the Board would review complaints against the Pool and report to the Board[9]. The State Auditor would either perform or oversee an annual audit of the Pool[10]. The Pool would be exempt from taxation[11].

BACKGROUND:

In its 2006 Interim Report to the General Assembly, the House Select Committee on Health Care recommended that the General Assembly enact legislation to implement a health insurance high-risk pool to enable individuals with high-risk health conditions to obtain health insurance at premium rates that are more affordable than currently available. Both the Subcommittee on Access and the Subcommittee on Cost of Health Care and Health Insurance for Employees and Employers explored the issue of health insurance high-risk pools in detail. House Bill 1895 is the product of these efforts and was presented as Recommendation 2 of the Subcommittee on Access recommendations to the House Select Committee on Health Care.

The North Carolina Institute of Medicine, Task Force on Covering the Uninsured recently issued a final report addressing a range of issues relating to the uninsured population of this State, including high-risk pools. Recommendation 6.5 calls for the General Assembly to enact legislation to implement a high-risk pool. House Bill 1895 incorporates many of the details put forth in Recommendation 6.5.

Currently, 33 states have established or are establishing high-risk health insurance pools. The Federal Trade Act of 2002 provides a federal grant of up to $1,000,000 to each state establishing new pools. This seed money went to the costs of creating the pool, not the actual financing of it. The act also provided for a matching federal grant of up to 50% of the losses incurred by a state in connection with the operation of the pool. $40,000,000 was appropriated for each fiscal year 2003 and 2004. In 2003, Congress passed legislation extending and providing addition federal funding through 2009.

EFFECTIVE DATE:

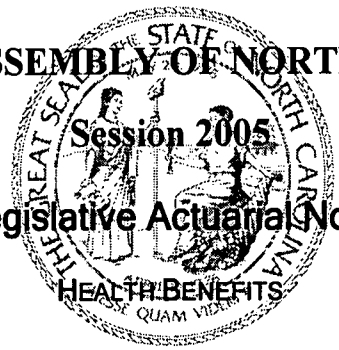
The act would become effective when it becomes law. Coverage under the North Carolina Health Insurance Risk Pool would only be offered upon passage of an act of the General Assembly establishing *H1895e2-SMRD-CSRD.*

H1895e2-SMRD-CSRD

---

[7] Proposed G.S. 58-50-280.
[8] Proposed G.S. 58-50-290.
[9] Proposed G.S. 58-50-295.
[10] Proposed G.S. 58-50-300.
[11] Proposed G.S. 58-50-305.

GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2005

Legislative Actuarial Note

HEALTH BENEFITS

BILL NUMBER: Proposed Committee Substitute H1895-CSRD-49 [v.4]

SHORT TITLE: Establish High-Risk Pool.

SPONSOR(S):

SYSTEM OR PROGRAM AFFECTED: Teachers' and State Employees' Comprehensive Major Medical Plan.

FUNDS AFFECTED: State General Fund, State Highway Fund, other State employer receipts, premium payments for dependents by active and retired teachers and State employees, premium payments for coverages selected by eligible former teachers and State employees, premium payments for coverages selected by firefighters, rescue squad workers, members of the National Guard, certain County local governments, and the North Carolina Symphony Society, Inc.

BILL SUMMARY: The proposed committee substitute modifies the second edition of House Bill 1895 to include the Teachers' and State Employees' Comprehensive Major Medical Plan (Plan) under the definition of insurer under a proposed G.S. 58-50-245 (15).

EFFECTIVE DATE: July 1, 2006

ESTIMATED IMPACT ON STATE: By including the Plan under the proposed definition of insurer, the Plan would be subject to a financial assessment fee specified in the bill under the proposed G.S. 58-50-290(b). The proposed assessment fee is applied to the Plan at a monthly rate of up to two dollars ($2.00) per covered plan member. The actual assessed fee charged to the Plan and other nongovernmental health benefit plans covering lives in the State will be based on actual and expected losses, actuarially appropriate reserves, and administrative expenses in excess of expected and collected premiums and federal loss reimbursements received by the proposed high risk pool.

Aon Consulting, the consulting actuary for the Teachers' and State Employees' Comprehensive Major Medical Plan (Plan), estimates the bill will cost the Plan a midpoint estimate of $4.9 million in the 2007-2008 fiscal year and $9.8 million in the 2008-2009 fiscal year.

Hartman and Associates, consulting actuary for the North Carolina General Assembly, projects a best estimate cost to the Plan of $2.3 million in the 2007-2008 fiscal year and $5.3 million in the 2008-2009 fiscal year.

ASSUMPTIONS AND METHODOLOGY: The Comprehensive Major Medical Plan for Teachers and State Employees currently operates a self-insured indemnity type health benefit program serving covered employees, retired employees, eligible dependents of employees and retired employees, and eligible former employees and their eligible dependents authorized to continue coverage past a termination of employment other than for retirement or disability purposes. The benefits of the self-insured indemnity type of program are spelled out in Part 3 of Article 3 of Chapter 135 of the North Carolina General Statutes (i.e., $350 annual deductible, 20% coinsurance up to $2,000 annually, etc. paid by the program's members).

The Plan also has statutory authorization under G.S. 135-39.5B(a) to operate optional prepaid programs of health benefit coverage. A prepaid program of coverage by health maintenance organizations (HMOs) was offered in July 1986 under this authority, as an alternative to the Plan's self-insured indemnity program, where HMOs were required to offer benefits that were comparable to those provided by the self-insured indemnity program at that time. Coverage under prepaid HMO plan alternatives ceased being offered after September 30, 2001 due to the lack of HMOs with certificates of authority to transact business in the state responding to solicitations by the Plan to offer them as alternatives.

The 2005 Session of the General Assembly modified the Plan's statutes by adding G.S. 135-39.5(b) to allow the Plan to adopt an arrangement for optional hospital and medical benefits programs other than an option prepaid program on a purchased or underwritten basis including a preferred provider option (PPO) or other type optional program. After consultation with the Committee on Employee Hospital and Medical benefits in early 2006, the Plan has elected to offer benefit alternatives under a PPO option beginning October 1, 2006.

Beginning in July 2000, firefighters, rescue squad workers, and members of the National Guard and their eligible dependents were allowed to voluntarily participate in the Plan on a fully contributory basis, provided they were ineligible for any other type of group health benefits and had been without such benefits for at least six months.

In July 2004, the North Carolina Symphony Society, Inc., a non-profit corporation, was included as an employing unit under the Plan for the purpose of providing health benefits to the Symphony Society's employees and employees' families. The Symphony Society provides health benefits for its employees and employee family members through a labor contract with the Professional Musicians Association, a local of the American Federation of Musicians. Coverage under the Plan will be on a partially contributory basis for Symphony Society employees and enrolled spouses and dependent children. The amount of contributions provided by the Symphony Society and by their employees is determined periodically in accordance with the labor contract. The Plan's Executive Administrator and Board of Trustees are required to set premium rates for Symphony Society employees and their families separate from those charged to active and retired teachers and state employees and their dependents enrolled in the Plan. Retired employees of the Symphony Society are not eligible for health benefits under the Plan since they are not members of the State Retirement Systems. The North Carolina Symphony, Inc. is authorized to be deemed an employing unit expires June 30, 2006.

Also beginning in July 2004, the North Carolina county local governments of Bladen, Cherokee, Rutherford, and Washington counties, and beginning in July 2005 the local government municipality of the Town of Forest City, were authorized to become employing units under the Plan for the purpose of providing health benefits to their respective employees, retired employees, and their employee's eligible spouses and dependent children. If a local government elects to participate in the Plan, they must by legal resolution approved by the Plan elect such participation and agree to make any contributions required by the Plan. A local government must allow all of its eligible employees and their eligible spouses and dependent children to enroll in the Plan on a non-contributory, partially contributory, or fully contributory basis. All enrolled employees, retired employees, and their family members will be required to participate in disease management, case management, and all other cost containment measures implemented by the Plan. If a local government elects to enroll its retired employees, and their eligible spouses and dependent children, the election is irrevocable. Local government employers making this election to cover retired employees are also required to make additional contributions to the Local Governmental Employees' Retirement System for this purpose as do all other employers participating in the Plan that cover its retired employees. If a local government does not participate in the Local Governmental Employees' Retirement System, but has another formally established retirement plan, and elects to cover its retired employees, it is required to make premium contributions to the Plan as it may require. Local governments and their employees and retired employees will pay the same premium rates as those charged by the Plan for active and retired teachers and state employees and their dependents enrolled in the Plan. County local governments authorized to participate in the Plan may do so through June 30, 2006. Of the county local governments authorized to participate in the Plan, only the counties of Bladen, Rutherford, and Washington have chosen to do so as of December 31, 2005.

Employer-paid non-contributory premiums are only authorized for the self-insured indemnity program and the three choices to be offered under the optional preferred provider option program's coverage for teachers, state employees and retired employees. All other types of premium contributions in the indemnity program and the preferred provider option program are fully contributory, except for job-sharing public school teachers who are authorized to pay partially contributory premiums at 50% of non-contributory rates. The Plan's Executive Administrator has set the premium rates for firefighters, rescue squad workers, and members of the National Guard and their families at 20% more than the comparable rates charged for teachers, state employees, retired employees, and their families. Similarly the Plan's Executive Administrator has set premium rates for members of the North Carolina Symphony Society, Inc. and their families at 51% more than the comparable rates charged for teachers, state employees, retired employees, and their families. Premiums paid by employers to optional programs are limited to like amounts paid to the indemnity program with employees and retired employees paying any optional program premium amounts above the indemnity program's non-contributory rates.

The demographics of the Plan as of December 31, 2005, include:

	Self-Insured Indemnity Program	Optional Programs	Plan Total
Number of Participants			
Active Employees	300,899	-0-	300,899

Active Employee Dependents	132,737	-0-	132,737
Retired Employees	133,486	-0-	133,486
Retired Employee Dependents	19,676	-0-	19,676
Former Employees & Dependents with Continued Coverage	2,482	-0-	2,482
Firefighters, Rescue Squad Workers, National Guard Symphony Members & Dependents	176	-0-	176
Local Government Members & Dependents	1,308	-0-	
Total Enrollments	590,764	-0-	590,764
Number of Contracts			
Employee Only	354,033	-0-	354,033
Employee & Child(ren)	41,686	-0-	41,686
Employee & Family	42,632	-0-	42,632
Total Contracts	438,351	-0-	438,351
Percentage of Enrollment by Age			
29 & Under	25.8%	-0-%	25.8%
30-44	20.4	-0-	20.4
45-54	19.7	-0-	19.7
55-64	18.6	-0-	18.6
65 & Over	15.6	-0-	15.6
Percentage of Enrollment by Sex			
Male	37.5%	-0-%	37.9%
Female	62.5	-0-	62.1

Assumptions for the Self-Insured Indemnity Program: For the fiscal year beginning July 1, 2005, the self-insured program started its operations with a beginning cash balance of $188.1 million. Receipts for the year are estimated to be $1.879 billion from premium collections and $9.6 million from investment earnings for a total of $1.888 billion in receipts for the year. Disbursements from the self-insured program are expected to be $1.740 billion in claim payments and $77.7 million in administration and claims processing expenses for a total of $1.817 billion for the year beginning July 1, 2005. For the fiscal year beginning July 1, 2005, the self-insured indemnity program is expected to have a net operating gain of approximately $70.9 million for the year. The Plan's self-insured indemnity program is expected to have an available beginning cash balance of $259 million for the fiscal year beginning July 1, 2006. The self-insured indemnity program is assumed to be able to carry out its operations for the 2005-2007 biennium without increases in its current premium rates or a reduction in existing benefits or payments to health care providers or both.

This assumption is further predicated upon the fact that the program's cost containment strategies (hospital DRG reimbursements, discounts on hospital outpatient services, pre-admission hospital testing, pre-admission hospital inpatient certification with length-of-stay approval, hospital bill audits, case and disease management for selected medical conditions, mental health case management, coordination of benefits with other payers, Medicare benefit "carve-outs", cost reduction contracts with participating physicians and other providers, a prescription drug benefit manager with manufacturer rebates from formularies, and fraud detection) are maintained and improved where possible.

Current non-contributory premium rates are $244.48 monthly for employees whose primary payer of health benefits is Medicare and $321.14 per month for employees whose primary payer of health benefits is not Medicare. Fully contributory premium amounts for employee and child(ren) contracts are $152.16 monthly for children whose primary payer of health benefits is Medicare and $200.18 monthly for other covered children, and $364.92 month for family contracts whose dependents have Medicare as the primary payer of health benefits and $480.14 per month for other family contract dependents.

Claim cost trends are expected to increase at a rate of 11% annually. Total enrollment in the program is expected to increase less than 2% annually over the next few years. The number of enrolled active employees is expected to increase about 2.5% annually over the next few years, whereas the growth in the number of retired employees is assumed to be 5% per year. The program is expected to have a 1% decrease in the number of active employee dependents per year whereas the number of retiree dependents is expected to increase 1% per year. Investment earnings are based upon a 4.5% return on available cash balances. The self-insured indemnity program maintains a claim stabilization reserve for claim cost fluctuations equal to 7.5% of annual claim payments without reserving additional funds for incurred but unreported claims.

Additional assumptions for the proposed committee substitute to HB 1895:

Data was provided by the North Carolina Institute of Medicine (IOM) in conjunction with Blue Cross Blue Shield of North Carolina (BCBSNC) as to the baseline assumptions for a high-risk pool as proposed in the bill. The amount of projected loss net of premiums paid is an estimated $29.9 million on a current basis assuming medical provider reimbursement at standard Medicare rates. The claims estimates were generated from an analysis by the IOM and BCBSNC based on underwriting experience from insured individuals in higher-risk tiers for a specific individually underwritten insured product offered by the insurer. This loss represents the baseline claims loss projected on a current basis from which the Plan's actuary and the General Assembly's actuary projected future losses for ultimately determining each actuary's projected, though different, assessment rate charges to be paid by the Plan on a per member per month basis. The data also estimated the number of enrollees in the high-risk pool to be 9,000 participants or 1% of the estimated uninsured population. The estimated number of covered insured lives in the State was assumed to be 5 million based on U.S. Census estimates and North Carolina Department of Insurance projections.

Aon Consulting's estimate is based on a projected average enrollment of 651,000 plan members assuming a 10% increase in Plan enrollment as a result of the implementation of a preferred

provider option effective October 1, 2006. In addition to normal claims growth trends Aon Consulting also estimates the high-risk pool claims to be 100% to 300% greater than projected by the IOM and BCBSNC. Assessment fees projected by Aon Consulting are assumed to be a midpoint estimate of $1.25 per member per month.

Hartman and Associates assume a 12% rate growth in the baseline claims provided by the Institute of Medicine and an enrollment growth rate of 2% annually for membership in the Plan for total average membership of 626,000. The assessment fee projected by Hartman and Associates is fifty-cents (.50) per member per month in the 2007-2008 fiscal year and seventy-cents (.70) per member per month in the 2008-2009 fiscal year. The analysis by Hartman and Associates does not assume additional claims risk beyond what is projected by the IOM and BCBSNC.

SOURCES OF DATA:

-Actuarial Note, Hartman & Associates, Proposed Amendment to House Bill 1895, June 16, 2006, original of which is on file in the General Assembly's Fiscal Research Division.
-Actuarial Note, Aon Consulting, Proposed Amendment to House Bill 1895, June 20, 2006, original of which is on file with the Comprehensive Major Medical Plan for Teachers and State Employees and the General Assembly's Fiscal Research Division.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Mark Trogdon

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: July 5, 2006

Fact Sheet

Expanding Health Insurance Coverage to More North Carolinians

April 2006

Expanding Health Insurance Coverage to People with Pre-existing Health Problems

Individuals who have pre-existing health problems face significant barriers obtaining health insurance coverage in the nongroup market. In employer-sponsored plans, those with pre-existing health problems cannot be excluded from coverage or charged higher premiums. However, the same rules do not apply in the nongroup market.

Many insurance companies refuse to issue policies or limit coverage for people with pre-existing health problems in the nongroup market. For example, a national study conducted for the Kaiser Family Foundation found that 8% of insurers refused to issue a policy to a 24-year-old female with hay fever, and 55% refused to issue a policy to a 55-year-old, overweight, male smoker with high blood pressure.[1]

BlueCross BlueShield of North Carolina (BCBSNC) is the only insurer in the state to offer health insurance in the nongroup market on a guaranteed issue basis. Premiums vary, based on the age, geographic location, and health status of the individual. The premiums are established to cover the anticipated costs of care for people with pre-existing health problems. Since there are no other sources of payments for these individuals with high medical costs, premiums may be as much as seven times the standard rate charged to someone with average health risks. For example, nongroup health insurance coverage for a 35-year-old man with major health problems could cost more than $800/month (for a $1,000 deductible, 30% coinsurance plan), or more than $1,800/month for a 55-year-old man. Coverage for women is generally more expensive, especially if they want maternity coverage. *People with pre-existing health problems are most in need of health insurance to help pay for healthcare services, but the premiums needed to cover the costs of care often make this coverage unaffordable in the nongroup market.*

Thirty-three states have established high-risk pools to help spread the costs of providing insurance to people with significant pre-existing health problems.[2] Research suggests that about 1% of the population have difficulties obtaining insurance due to their health status. This population is often called the "medically uninsurable."[3] Experience from other states with high-risk pools suggest that 10%-30% of these individuals may enroll in a high-risk pool, depending on the premium price and whether the state offers additional subsidies for low-income people.[2]

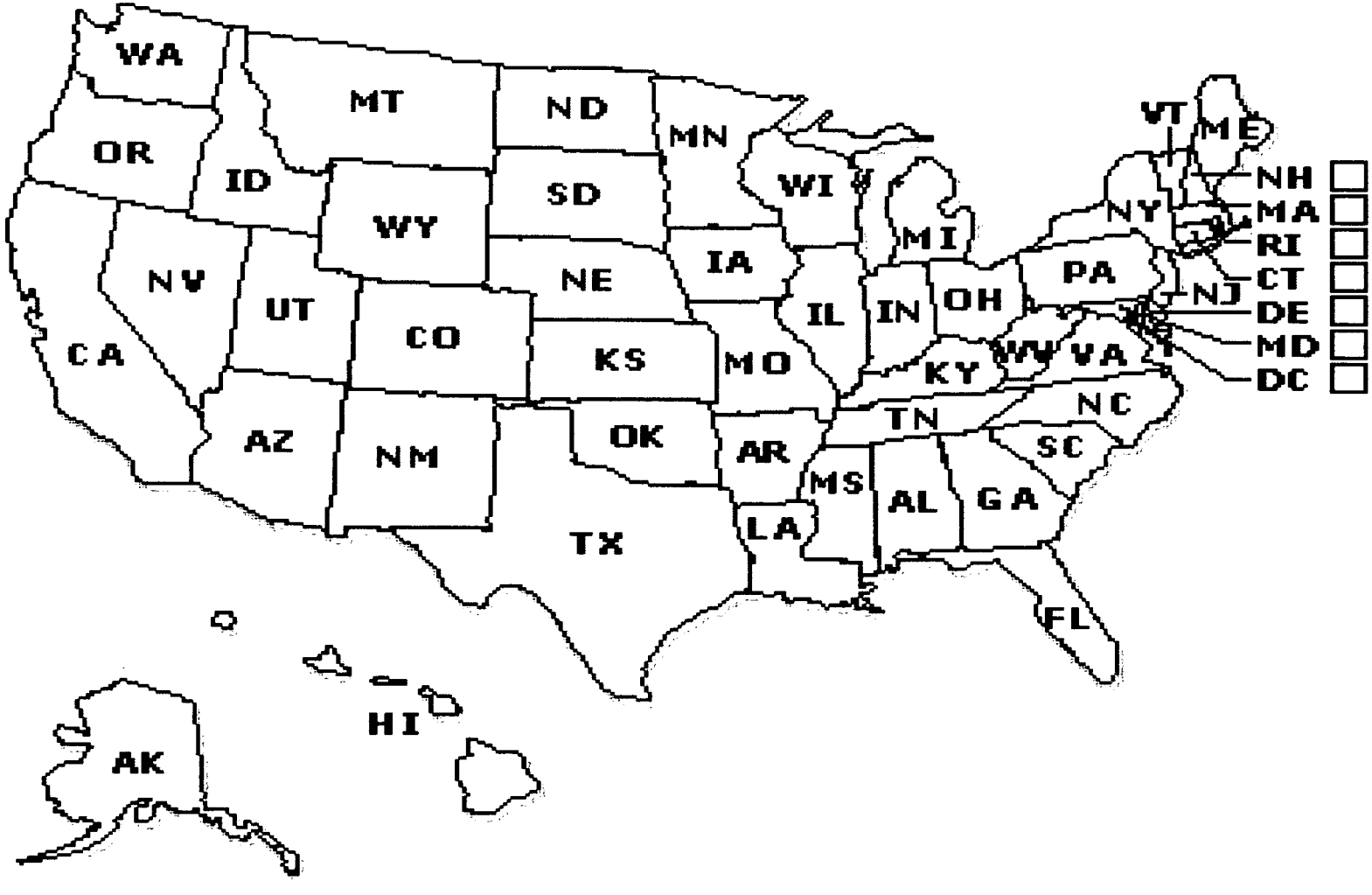
States typically limit the maximum premium charged to medically uninsurable individuals to no more than 150% of the standard rate in order to make it more affordable. Some states provide a further subsidy to help lower-income individuals pay their premiums. The premiums paid do not cover the full cost of the claims incurred in these high-risk pools. Therefore, most states fund the deficits through an assessment on insurance companies, state appropriations, or other means.

The NC Institute of MedicineTask Force on Covering the Uninsured recommended that the NC General Assembly create a high-risk pool that limits premiums to 150% of the standard risk, so that more people with pre-existing health problems can afford coverage. Losses should be covered through an assessment on insurers, including traditional insurance companies, Health Maintenance Organizations (HMOs), Multiple Employer Welfare Arrangements (MEWAs), third party administrators, and stop-loss and reinsurance carriers.[4,2] Providers would be paid using Medicare payment rates, which are less than what is typically offered through commercial insurance. The General Assembly should also help subsidize premium costs for lower-income individuals.[5]

Federal funding is available to help defray some of the costs of the high-risk pool. Congress appropriated funds to provide start-up grants of up to $1 million for states that have not yet established a high-risk pool. In addition, Congress appropriated $75 million/year through 2010 to help offset some of the ongoing operational costs of state high-risk pools: 40% of the money will be distributed equally among states that operate high-risk pools, 30% based on the numbers of uninsured in the state, and 30% based on the number of participants in the state's high-risk pool.

State High-Risk Health Insurance Pools as of December 31, 2004

Source: www.statehealthfacts.org



☐ **Yes**

☐ **No**

☐ **No data available** (Tennessee's Tenncare program serves uninsurable individuals as well as Medicaid and uninsured populations)

North Carolina General Assembly

House Committee on Finance

Minutes

~

July 10, 2006

The House Committee on Finance met on Tuesday, July 10, 2006 at 3:00 pm in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Alexander, Gibson, Howard, and McComas; Vice-Chairs Daughtridge, Hill, Ross, Weiss, and Womble; and Representatives Blackwood, Bordsen, Capps, Carney, Faison, Folwell, Glazier, Goforth, Hackney, Harrell, Holliman, Insko, Jones, Lewis, McGee, Underhill, Walend, and Wiley. Representative Rayfield was granted an excused absence. Also present were Sergeant-at-Arms Mark Cone, Will Heath, Fred Hines, Marvin Lee, and Dusty Rhodes. Staff persons present included Cindy Avrette, Rodney Bizzell, David Crotts, Dan Ettefagh, Canaan Huie and Martha Walston. The Agenda and Visitor Registration Sheets are attached and incorporated into these minutes as **attachments 1 and 2.**

Chairwoman Howard called the meeting to order at 3:04 pm and first recognized Representative Faison who moved for the adoption of the proposed committee substitute (PCS) for **HB 1891 – CLARIFY ADDITIONAL GROSS PREMIUMS TAX** (see **attachment 3**) for the purposes of discussion. The motion carried. Cindy Avrette of Research Staff was recognized and explained that the PCS specifies the percentage of an insurance policy's gross premiums to which the additional gross premiums tax on fire and lightning coverage applies and it would provide that the additional tax would apply to all types of policies that insure against fire and lightning loss. Mrs. Avrette also stated that the PCS would make the new method of taxation effective for taxable years beginning on or after January 1, 2008. She reported that the bill was a recommendation from the Revenue Laws Study Committee. Representative Faison was then recognized and asked if more people would be taxed under this legislation. In response, Mrs. Avrette said that this change will tax more people, however the tax will be set at a lower rate. Representative Alexander was then recognized and moved for a favorable report to the proposed committee substitute and an unfavorable to the original bill. Seeing no further discussion, Chairwoman Howard called the motion to a vote and it carried without objection.

Without objection, Chairwoman Howard then placed **SB 1428 - VARIOUS SATELLITE ANNEXATIONS/REFERENDUM** (see **attachment 4**) on the Committee's calendar for immediate consideration. Chairwoman Howard recognized Martha Walston from Fiscal Research Staff to explain the bill. She stated that this bill exempts seven municipalities from the ten percent (10%) satellite annexation cap. Following the explanation, Representative Hill sent forth a technical amendment (see **attachment 5**) and moved for the amendment's adoption. He explained that the amendment deletes the Towns of Princeton and Smithfield from the bill as House Bill 1989 (passed earlier by the Committee) had already provided the exemption for both of these municipalities. As there was no further debate, Chairwoman Howard called the motion to a vote and the amendment

was adopted. Representative Capps was then recognized and stated that he supports the bill on a limited basis but does not support the permanent nature of the caps being lifted. Chairwoman Howard then displaced the bill as Representative Capps constructed an amendment.

Chairwoman Howard then recognized Representative Alexander who moved for the adoption of the proposed committee substitute (PCS) for **SB 1621 – WAGE STANDARD - CERTAIN MANUFACTURERS** (see **attachment 6**). The motion carried. To explain the bill, Representative Hackney was recognized and gave an overview of the three different projects being authorized for certificates of participation under the PCS. The first special indebtedness project being authorized totals seven million dollars ($7,000,000) to complete the construction of five youth development centers. He then explained that the second special indebtedness project totals twenty million dollars ($20,000,000) and provided for a parking garage on Jones Street in Raleigh. The third project totals twenty million dollars ($20,000,000) and would be provided for the purchase of land by the Wildlife Resources Commission to be used as State game lands. Representative Gibson was then recognized and noted that each of these certificates of participation measures have previously been seen by the Committee. Chairwoman Howard then recognized Representative Holliman who asked if the parking garage would only serve state employees. Representative Ross was then recognized and stated that the parking garage would serve state employees and visitors. She also stated that the certificates of participation would be receipt supported. Representative Blackwood was then recognized and asked how the state would be paying back money on the youth development centers. In response, Representative Hackney stated that the certificates of participation would be financed with general funds. He also noted that the youth development center projects were already on the books and the extra seven million dollars would help to complete the project. Chairwoman Howard then recognized Representative McGee who asked how the Wildlife Resources Commission certificates of participation would be funded. Chairwoman Howard then recognized Dick Hamilton of the Wildlife Commission who stated that this bill would be funded with receipts from the sale of timber. Representative Gibson was then recognized and moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. Seeing no further discussion, Chairwoman Howard called the motion to a vote and it carried by consent.

Chairwoman Howard then replaced **SB 1428 - VARIOUS SATELLITE ANNEXATIONS/REFERENDUM** (see **attachment 4**) before the Committee. Martha Walston of Fiscal Research then explained that the amendment requested by Representative Capps was not necessarily needed for this bill because municipalities already have to abide by certain criteria for satellite annexations. She then stated that the removal of the satellite annexation cap would not give municipalities complete freedom in making satellite annexations. Representative Hill was then recognized and moved that Senate Bill 1428 be given a favorable report, as earlier amended by Representative Hill. As there was no further debate, Chairwoman Howard called the motion to a vote and it carried by consent.

The final bill considered by the Committee was **HB 1895 – ESTABLISH HIGH-RISK POOL** (see **attachment 7**). Representative Insko was first recognized and moved for the adoption of the proposed committee substitute (PCS) for the Committee's consideration. Representative Insko then gave an overview of the bill. She first stated that this bill is a recommendation of the House Select Committee on Health Care. Representative Insko then stated that the bill would establish the NC Health Insurance Risk Pool which would enable individuals with high-risk health conditions to obtain health insurance at premium rates that are more affordable than currently available. The more affordable rates would be provided through a combination of premiums and a two-dollar per month assessment per individual on all health insurance policies in North Carolina. Representative Holliman was then recognized and stated that this bill is part of the solution to

increasing the number of insured persons in North Carolina. He then urged fellow committee members to support the bill. Representative Blackwood was then recognized and asked if illegal immigrants would be eligible for coverage under the high risk pool. Chairwoman Howard then recognized Ben Popkin of Research who explained that one of the requirements for eligibility is that a person must be legally domiciled in NC for over 30 days.

Representative Womble was then recognized and asked how many additional people would be eligible for coverage as a result of the bill. In response, Representative Insko stated that this bill would make over nine thousand additional people eligible for health insurance. Representative Underhill was then recognized and asked about some of the diagnoses that make a person uninsurable. Lewis Velo from the Department of Insurance was recognized and stated that possible diagnoses making a person automatically uninsurable could be certain types of diabetes, heart history, or family history. Chairwoman Howard then recognized Representative Wiley who asked about the lifetime benefit ceiling of this bill. Ben Popkin of Research was again recognized and stated that the lifetime benefit ceiling was one million dollars. Representative Blust was recognized and asked why people would be allowed to join the health insurance pool without being first denied by a traditional health insurance plan. Representative Insko then stated that there are some conditions that automatically lead to a person being denied coverage and this would make the process move quicker for these individuals to apply for coverage. Chairwoman Howard then recognized Representative Blackwood who sent forth an amendment (see **attachment 8**) and explained that the amendment would insert a phrase that would make an individual eligible only if the person was present in the United States legally. Representative Blackwood then moved for the adoption of the amendment. Since there was no further discussion, Chairwoman Howard called the motion to a vote and the amendment was adopted. Representative Insko then sent forth an amendment (see **attachment 9**) that deletes the phrase, "executive director," and replaces it with the word "board." This amendment would give the Board of Directors of the Risk Pool greater involvement in implementing policy. Representative Insko then moved for the adoption of the amendment. As there was no further debate, Chairwoman Howard called the motion to a vote and the amendment was adopted. Representative Walend was then recognized and asked what the cost would be to the State Health Plan. Marcus Downs of the State Health Plan was recognized and stated that the State Health Plan did not initially support the plan because it would hurt its membership. However, since a compromise had been worked out, Mr. Downs reported that his organization now supports the bill. Representative Weiss then moved for a favorable report to the proposed committee substitute incorporating the amendments and an unfavorable report to the original bill. As there was no further discussion, Chairwoman Howard called the motion to a vote and it carried by consent.

Chairwoman Howard then referred **SB 1431 - BURGAW OCCUPANCY TAX** to the House Finance Subcommittee on Occupancy Tax. She then announced that the Subcommittee on Occupancy Tax would meet on Tuesday, July 11, 2006, at 8:00 am in Room 544 of the Legislative Office Building. Having no further business before the Committee, Chairwoman Howard then announced that the Committee would be meeting Tuesday, July 11, at 8:30 am. She then adjourned the meeting at 4:19 pm.

Respectfully submitted,

Representative Julia Howard
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:

1. Agenda
2. Visitor Registration Sheets
3. House Bill 1891 (and related materials)
4. Senate Bill 1428 (and related materials)
5. Hill Amendment on SB 1428 - **ADOPTED**
6. Senate Bill 1621 (and related materials)
7. House Bill 1895 (and related materials)
8. Blackwood Amendment on HB 1895 – **ADOPTED**
9. Insko Amendment on HB 1895 – **ADOPTED**

North Carolina General Assembly

House Committee on Finance

Minutes

~

July 10, 2006

The House Committee on Finance met on Tuesday, July 10, 2006 at 3:00 pm in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Alexander, Gibson, Howard, and McComas; Vice-Chairs Daughtridge, Hill, Ross, Weiss, and Womble; and Representatives Blackwood, Bordsen, Capps, Carney, Faison, Folwell, Glazier, Goforth, Hackney, Harrell, Holliman, Insko, Jones, Lewis, McGee, Underhill, Walend, and Wiley. Representative Rayfield was granted an excused absence. Also present were Sergeant-at-Arms Mark Cone, Will Heath, Fred Hines, Marvin Lee, and Dusty Rhodes. Staff persons present included Cindy Avrette, Rodney Bizzell, David Crotts, Dan Ettefagh, Canaan Huie and Martha Walston. The Agenda and Visitor Registration Sheets are attached and incorporated into these minutes as **attachments 1 and 2.**

Chairwoman Howard called the meeting to order at 3:04 pm and first recognized Representative Faison who moved for the adoption of the proposed committee substitute (PCS) for HB 1891 – CLARIFY ADDITIONAL GROSS PREMIUMS TAX (see **attachment 3**) for the purposes of discussion. The motion carried. Cindy Avrette of Research Staff was recognized and explained that the PCS specifies the percentage of an insurance policy's gross premiums to which the additional gross premiums tax on fire and lightning coverage applies and it would provide that the additional tax would apply to all types of policies that insure against fire and lightning loss. Mrs. Avrette also stated that the PCS would make the new method of taxation effective for taxable years beginning on or after January 1, 2008. She reported that the bill was a recommendation from the Revenue Laws Study Committee. Representative Faison was then recognized and asked if more people would be taxed under this legislation. In response, Mrs. Avrette said that this change will tax more people, however the tax will be set at a lower rate. Representative Alexander was then recognized and moved for a favorable report to the proposed committee substitute and an unfavorable to the original bill. Seeing no further discussion, Chairwoman Howard called the motion to a vote and it carried without objection.

Without objection, Chairwoman Howard then placed SB 1428 - VARIOUS SATELLITE ANNEXATIONS/REFERENDUM (see **attachment 4**) on the Committee's calendar for immediate consideration. Chairwoman Howard recognized Martha Walston from Fiscal Research Staff to explain the bill. She stated that this bill exempts seven municipalities from the ten percent (10%) satellite annexation cap. Following the explanation, Representative Hill sent forth a technical amendment (see **attachment 5**) and moved for the amendment's adoption. He explained that the amendment deletes the Towns of Princeton and Smithfield from the bill as House Bill 1989 (passed earlier by the Committee) had already provided the exemption for both of these municipalities. As there was no further debate, Chairwoman Howard called the motion to a vote and the amendment

was adopted. Representative Capps was then recognized and stated that he supports the bill on a limited basis but does not support the permanent nature of the caps being lifted. Chairwoman Howard then displaced the bill as Representative Capps constructed an amendment.

Chairwoman Howard then recognized Representative Alexander who moved for the adoption of the proposed committee substitute (PCS) for **SB 1621 – WAGE STANDARD - CERTAIN MANUFACTURERS** (see **attachment 6**). The motion carried. To explain the bill, Representative Hackney was recognized and gave an overview of the three different projects being authorized for certificates of participation under the PCS. The first special indebtedness project being authorized totals seven million dollars ($7,000,000) to complete the construction of five youth development centers. He then explained that the second special indebtedness project totals twenty million dollars ($20,000,000) and provided for a parking garage on Jones Street in Raleigh. The third project totals twenty million dollars ($20,000,000) and would be provided for the purchase of land by the Wildlife Resources Commission to be used as State game lands. Representative Gibson was then recognized and noted that each of these certificates of participation measures have previously been seen by the Committee. Chairwoman Howard then recognized Representative Holliman who asked if the parking garage would only serve state employees. Representative Ross was then recognized and stated that the parking garage would serve state employees and visitors. She also stated that the certificates of participation would be receipt supported. Representative Blackwood was then recognized and asked how the state would be paying back money on the youth development centers. In response, Representative Hackney stated that the certificates of participation would be financed with general funds. He also noted that the youth development center projects were already on the books and the extra seven million dollars would help to complete the project. Chairwoman Howard then recognized Representative McGee who asked how the Wildlife Resources Commission certificates of participation would be funded. Chairwoman Howard then recognized Dick Hamilton of the Wildlife Commission who stated that this bill would be funded with receipts from the sale of timber. Representative Gibson was then recognized and moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. Seeing no further discussion, Chairwoman Howard called the motion to a vote and it carried by consent.

Chairwoman Howard then replaced **SB 1428 - VARIOUS SATELLITE ANNEXATIONS/REFERENDUM** (see **attachment 4**) before the Committee. Martha Walston of Fiscal Research then explained that the amendment requested by Representative Capps was not necessarily needed for this bill because municipalities already have to abide by certain criteria for satellite annexations. She then stated that the removal of the satellite annexation cap would not give municipalities complete freedom in making satellite annexations. Representative Hill was then recognized and moved that Senate Bill 1428 be given a favorable report, as earlier amended by Representative Hill. As there was no further debate, Chairwoman Howard called the motion to a vote and it carried by consent.

The final bill considered by the Committee was **HB 1895 – ESTABLISH HIGH-RISK POOL** (see **attachment 7**). Representative Insko was first recognized and moved for the adoption of the proposed committee substitute (PCS) for the Committee's consideration. Representative Insko then gave an overview of the bill. She first stated that this bill is a recommendation of the House Select Committee on Health Care. Representative Insko then stated that the bill would establish the NC Health Insurance Risk Pool which would enable individuals with high-risk health conditions to obtain health insurance at premium rates that are more affordable than currently available. The more affordable rates would be provided through a combination of premiums and a two-dollar per month assessment per individual on all health insurance policies in North Carolina. Representative Holliman was then recognized and stated that this bill is part of the solution to

increasing the number of insured persons in North Carolina. He then urged fellow committee members to support the bill. Representative Blackwood was then recognized and asked if illegal immigrants would be eligible for coverage under the high risk pool. Chairwoman Howard then recognized Ben Popkin of Research who explained that one of the requirements for eligibility is that a person must be legally domiciled in NC for over 30 days.

Representative Womble was then recognized and asked how many additional people would be eligible for coverage as a result of the bill. In response, Representative Insko stated that this bill would make over nine thousand additional people eligible for health insurance. Representative Underhill was then recognized and asked about some of the diagnoses that make a person uninsurable. Lewis Velo from the Department of Insurance was recognized and stated that possible diagnoses making a person automatically uninsurable could be certain types of diabetes, heart history, or family history. Chairwoman Howard then recognized Representative Wiley who asked about the lifetime benefit ceiling of this bill. Ben Popkin of Research was again recognized and stated that the lifetime benefit ceiling was one million dollars. Representative Blust was recognized and asked why people would be allowed to join the health insurance pool without being first denied by a traditional health insurance plan. Representative Insko then stated that there are some conditions that automatically lead to a person being denied coverage and this would make the process move quicker for these individuals to apply for coverage. Chairwoman Howard then recognized Representative Blackwood who sent forth an amendment (see **attachment 8**) and explained that the amendment would insert a phrase that would make an individual eligible only if the person was present in the United States legally. Representative Blackwood then moved for the adoption of the amendment. Since there was no further discussion, Chairwoman Howard called the motion to a vote and the amendment was adopted. Representative Insko then sent forth an amendment (see **attachment 9**) that deletes the phrase, "executive director," and replaces it with the word "board." This amendment would give the Board of Directors of the Risk Pool greater involvement in implementing policy. Representative Insko then moved for the adoption of the amendment. As there was no further debate, Chairwoman Howard called the motion to a vote and the amendment was adopted. Representative Walend was then recognized and asked what the cost would be to the State Health Plan. Marcus Downs of the State Health Plan was recognized and stated that the State Health Plan did not initially support the plan because it would hurt its membership. However, since a compromise had been worked out, Mr. Downs reported that his organization now supports the bill. Representative Weiss then moved for a favorable report to the proposed committee substitute incorporating the amendments and an unfavorable report to the original bill. As there was no further discussion, Chairwoman Howard called the motion to a vote and it carried by consent.

Chairwoman Howard then referred **SB 1431 - BURGAW OCCUPANCY TAX** to the House Finance Subcommittee on Occupancy Tax. She then announced that the Subcommittee on Occupancy Tax would meet on Tuesday, July 11, 2006, at 8:00 am in Room 544 of the Legislative Office Building. Having no further business before the Committee, Chairwoman Howard then announced that the Committee would be meeting Tuesday, July 11, at 8:30 am. She then adjourned the meeting at 4:19 pm.

Respectfully submitted,

Representative Julia Howard
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:

1. Agenda
2. Visitor Registration Sheets
3. House Bill 1891 (and related materials)
4. Senate Bill 1428 (and related materials)
5. Hill Amendment on SB 1428 - **ADOPTED**
6. Senate Bill 1621 (and related materials)
7. House Bill 1895 (and related materials)
8. Blackwood Amendment on HB 1895 – **ADOPTED**
9. Insko Amendment on HB 1895 – **ADOPTED**

AGENDA

ATTACHMENT 1

House Finance Committee

Monday, July 10, 2006
3:00 p.m.
Room 544 LOB
Chaired by: Rep. Howard

Co-Chairs

Representative Martha Alexander
Representative Pryor Gibson
Representative Julia Howard

Representative Paul Luebke
Representative Danny McComas
Representative William Wainwright

Call to Order

Introduction of Pages

Bills:

HB 1891 **CLARIFY ADDITIONAL GROSS PREMIUMS TAX**
Reps. Wainwright, Luebke, Church, & Hill

HB 1895 **ESTABLISH HIGH-RISK POOL** *Reps. Insko, England, Nye, & Wright*

SB 1428 **VARIOUS SATELLITE ANNEXATIONS/REFERENDUM** *Sen. Soles*

SB 1431 **BURGAW OCCUPANCY TAX** *Sen. Soles*

SB 1621 **SPECIAL INDEBTEDNESS PROJECTS (PCS)**

SB 2011 **WINEMAKING ON PREMISES PERMIT (PCS)** *Rep. Luebke*

Adjournment

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

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

DAY & DATE: **Monday, July 10, 2006**

TIME: **3:00 p.m.**

LOCATION: **Room 544, LOB**

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

HB 1891 – CLARIFY ADDITIONAL GROSS PREMIUMS TAX – Reps. Wainwright, Luebke, Church, & Hill

HB 1895 – ESTABLISH HIGH-RISK POOL – Reps. Insko, England, Nye, & Wright

B 2485 – WILDLIFE COMMISSION INDEBTEDNESS – Reps. Hill, Ed Jones, Williams, & Wray

SB 1431 – BURGAW OCCUPANCY TAX – Sen. Soles

SB 1621 – WAGE STANDARD - CERTAIN MANUFACTURERS – Sen. Hoyle

SB 2011 – RAILROAD CARS SALES TAX CHANGES – Sen. Hoyle

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

I hereby certify this notice was filed by the committee clerk at the following offices at **4:45pm** on **July 6, 2006**:

X Principal Clerk
X Reading Clerk - House Chamber

Jason A. Cannon (Committee Clerk)

ATTACHMENT 2

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — July 10, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ed Turlington	BP
Randy Fraser	TWC
Kelly Calabria	Capstral
David Cobb	NCWRC
Tommy Clark	NCWRC
Richard Hamilton	NCWRC
Londa Myers	NCWRC
Heather Crosbaw	TNC
Erica Pieder	CWMTF
Anonymous Alien	NCACC
Edwin H. Patterson	DOA (SCO)

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — July 10, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dwayne Patterson	DJJDP
LARRY PLK	"
Charlotte Gerken	Am. Heart Assoc.
Susan Valaure	NW
Betty Turner	BAC
ANN LOFE	OVHS
Patrick Boffki	ALLEY ASSOCIATES, INC.
John Bowdish	AstraZeneca
John McKay	Governor's
Steve Woosley	NC Farm Bureau

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — July 10, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
William L Spencer	NCDOR
Andy Sagol	NCDOR
Anna Mitchell	NC DOR
Dana Simpson	Smith Anderson
Karl Knapp	DOR
Marcus Downs	NC State Health Plan
Amy Schilder	HANC
BRUCE THOMPSON	PARKER POE
Adam Whitehouse	Rep. Gibson's Office
Ken Melton	D.O.R.
Amy Rapka	DOA

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — July 10, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kathleen Edwards	UNC-CH Daily Bulletin
Louis Belo	NCDOI
Rob Schofield	NCCNP
Amy C. Granberson	NMSS
	NCDOR
Lennie Colton	NC DOR
Virginia Taylor	NCDOR
Catherine Reid	Young Moore & Henderson, P.A.
Lisa Riegel	NHTF
Amy Simes	NCDENR

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — July 10, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Joan Troy	NC WRC
Yogi Bear	Bambi -

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H D

HOUSE BILL 1891
PROPOSED COMMITTEE SUBSTITUTE H1891-CSRBx-77 [v.6]

7/10/2006 1:42:22 PM

Short Title: Simplify Fire & Lightning Tax Rate. (Public)

Sponsors:

Referred to:

May 11, 2006

A BILL TO BE ENTITLED

AN ACT TO CLARIFY AND SIMPLIFY THE APPLICATION OF THE ADDITIONAL GROSS PREMIUMS TAXES ON FIRE AND LIGHTNING COVERAGE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-228.5(d)(3) reads as rewritten:

"(d) Tax Rates; Disposition. –

...

(3) Additional Statewide Fire and Lightning Rate. – An additional tax ~~shall be applied to gross premiums on contracts of insurance applicable to fire and lightning coverage, except in the case of marine and automobile policies,~~ at the rate of one and thirty-three hundredths percent ~~(1.33%).~~(1.33%) applies to gross premiums on insurance contracts applicable to fire and lightning coverage, except marine and automobile contracts. The tax is a percentage of the gross premiums from the contracts, determined in accordance with the table in this subdivision. Twenty-five percent (25%) of the net proceeds of this additional tax shall be deposited in the Volunteer Fire Department Fund established in Article 87 of Chapter 58 of the General Statutes. The remaining net proceeds shall be credited to the General Fund.

Type of Insurance Contract	**Taxable Percentage**
Fire Loss	100%
Commercial Multiple Peril	
Nonliability portion	100%
Liability portion	0%
Homeowners	50%
Farm Owners	30%."

SECTION 2. G.S. 105-228.5(b)(2) and G.S. 105-228.5(d)(4) are repealed.

SECTION 3. G.S. 105-228.5(d)(3), as amended by Section 1 of this act, reads as rewritten:

"(d) Tax Rates; Disposition. –

...

(3) Additional ~~Statewide Fire and Lightning Rate.~~ Rate on Property Coverage Contracts. – An additional tax at the rate of ~~one and thirty-three hundredths percent (1.33%)~~ eighty-five hundredths percent (.85%) applies to gross premiums on insurance contracts ~~applicable to fire and lightning coverage, except marine and automobile contracts.~~ for property coverage. The tax is imposed on ten percent (10%) ~~a percentage~~ of the gross premiums from ~~the~~ insurance contracts for automobile physical damage coverage ~~contracts, determined in accordance with the table in this subdivision.~~ and on one hundred percent (100%) of the gross premiums from all other contracts for property coverage. Twenty ~~five~~ percent ~~(25%)~~ (20%) of the net proceeds of this additional tax ~~shall be deposited in~~ must be credited to the Volunteer Fire Department Fund established in Article 87 of Chapter 58 of the General Statutes. Twenty-five percent (25%) of the net proceeds must be credited to the Department of Insurance for disbursement pursuant to G.S. 58-84-25. The remaining net proceeds ~~shall~~ must be credited to the General Fund.

~~Type of Insurance Contract — Taxable Percentage~~
~~Fire Loss — 100%~~
~~Commercial Multiple Peril~~
~~Nonliability portion — 100%~~
~~Liability portion — 0%~~
~~Homeowners — 50%~~
~~Farm Owners — 30%.~~

The following definitions apply in this subdivision:

a. Automobile physical damage. – The following lines of business identified by the NAIC: private passenger automobile physical damage and commercial automobile physical damage.

b. Property coverage. – The following lines of business identified by the NAIC: fire, farm owners multiple peril, homeowners multiple peril, non-liability portion of commercial multiple peril, ocean marine, inland marine, earthquake, private passenger automobile physical damage, commercial automobile physical damage, aircraft, and boiler and machinery.

c. NAIC – National Association of Insurance Commissioners. "

SECTION 4. G.S. 105-228.5(e) reads as rewritten:

"(e) Report and Payment. – Each taxpayer doing business in this State shall, within the first 15 days of March, file with the Secretary of Revenue a full and accurate report of the total gross premiums as defined in this section, the payroll and other information required by the Secretary in the case of a self-insurer, or the total gross

collections from membership dues exclusive of receipts from cost plus plans collected in this State during the preceding calendar year. The taxes imposed by this section shall be remitted to the Secretary with the report.

~~In the case of an insurer liable for the additional local fire and lightning tax, the report shall include the information required under G.S. 58-84-1.~~"

SECTION 5. G.S. 105-228.5(f) reads as rewritten:

"(f) Installment Payments Required. – Taxpayers that are subject to the tax imposed by this section and have a premium tax ~~liability, not including the additional local fire and lightning tax,~~ liability of ten thousand dollars ($10,000) or more for business done in North Carolina during the immediately preceding year shall remit three equal quarterly installments with each installment equal to at least thirty-three and one-third percent (33 1/3%) of the premium tax liability incurred in the immediately preceding taxable year. The quarterly installment payments shall be made on or before April 15, June 15, and October 15 of each taxable year. The company shall remit the balance by the following March 15 in the same manner provided in this section for annual returns.

The Secretary of Revenue may permit an insurance company to pay less than the required estimated payment when the insurer reasonably believes that the total estimated payments made for the current year will exceed the total anticipated tax liability for the year.

An underpayment of an installment payment required by this subsection shall bear interest at the rate established under G.S. 105-241.1(i). Any overpayment shall bear interest as provided in G.S. 105-266(b) and, together with the interest, shall be credited to the company and applied against the taxes imposed upon the company under this Article."

SECTION 6. G.S. 58-84-1 is repealed.

SECTION 7. G.S. 58-84-25 reads as rewritten:

"**§ 58-84-25. Disbursement of funds by Insurance Commissioner.**

The Insurance Commissioner shall deduct the sum of three percent (3%) from the tax proceeds credited to the Department pursuant to ~~G.S. 105-228.5(d)(4)~~ G.S. 105-228.5(d)(3) and pay the same over to the treasurer of the State Firemen's Association for general purposes. The Insurance Commissioner shall deduct the sum of two percent (2%) from the tax proceeds and retain the same in the budget of the Department of Insurance for the purpose of administering the disbursement of funds by the board of trustees in accordance with the provisions of G.S. 58-84-35. The Insurance Commissioner shall, pursuant to G.S. 58-84-50, credit the amount forfeited by nonmember fire districts to the North Carolina State Firemen's Association. The Insurance Commissioner shall pay the remaining tax proceeds to the treasurer of each fire district ~~in proportion to the amount of business done in the fire district.~~ on a per capita basis, using the most recent annual population estimates certified by the State Budget Officer. These funds shall be held by the treasurer as a separate and distinct fund. The fire district shall immediately pay the funds to the treasurer of the local board of trustees upon the treasurer's election and qualification, for the use of the board of trustees of the firemen's local relief fund in each fire district, which board shall be

composed of five members, residents of the fire district as hereinafter provided for, to be used by it for the purposes provided in G.S. 58-84-35."

SECTION 8. G.S. 58-87-1 reads as rewritten:

§ 58-87-1. Volunteer Fire Department Fund.

(a) Fund. ~~There is created the~~ The Volunteer Fire Department Fund is created as an interest-bearing, non-reverting fund in the Department to provide matching grants to volunteer fire departments to purchase equipment and make capital improvements. The Commissioner shall administer the ~~Fund shall be distributed under the direction of the Commissioner of Insurance.~~ Fund. Up to two percent (2%) of the Fund may be used for additional staff and resources to administer th Fund in each fiscal year.

(a1) Grant Program. ~~Beginning January 1, 1988, an~~ An eligible fire department may apply to the Commissioner ~~of Insurance~~ for a grant under this section. In awarding grants under this section, the Commissioner must to the extent possible select applicants from all parts of the State based upon need. ~~Beginning May 1, 1988, and on each May 15, thereafter, the~~ The Commissioner must award the grants on May 15 of each year ~~shall make grants to eligible fire departments~~ subject to the following limitations:

(1) The size of a grant may not exceed twenty thousand dollars ($20,000);
(2) The applicant shall match the grant on a dollar-for-dollar basis;
(3) The grant may be used only for equipment purchases, payment of highway use taxes on those purchases, or capital expenditures necessary to provide fire protection services; and
(4) An applicant may receive no more than one grant per fiscal year.

~~In awarding grants under this section, the Commissioner shall to the extent possible select applicants from all parts of the State based upon need. Up to two percent (2%) of the Fund may be used for additional staff and resources to administer the Fund in each fiscal year.~~

~~No fire department may be declared ineligible for a grant under this section solely because it is classified as a municipal fire department.~~

(b) Eligible Fire Department. – A fire department is eligible for a grant under this section if it meets all of the ~~following conditions:~~ conditions of this subsection. No fire department may be declared ineligible for a grant solely because it is classified as a municipal fire department.

(1) It serves a response area of 6,000 or less in population. In making the population determination, the Department must use the most recent annual population estimates certified by the State Budget Officer.
(2) It consists entirely of volunteer members, with the exception that the unit may have paid members to fill the equivalent of three full-time paid positions.
(3) It has been certified by the Department of Insurance.

~~In making the population determination under subdivision (1) of this subsection, the Department shall use the most recent annual population estimates certified by the State Budget Officer.~~

(c) Report. – The Commissioner ~~of Insurance shall~~ must submit a written report to the General Assembly within 60 days after the grants have been made. This report ~~shall~~ must contain the amount of the grant and the name of the recipient."

SECTION 9. The Revenue Laws Study Committee shall study the simplification of the additional tax imposed on insurance contracts on property coverage, as enacted in Section 3 of this act, and the distribution of the revenue generated by the tax. The study of this issue may include a recommendation on the percentage of revenue to be distributed to the firemen's local relief funds and the formula for making this distribution. The study may also consider the increasing difference between the amount of revenue available in the Volunteer Fire Department Fund for matching grants to purchase equipment and make capital improvements and the amount of grant requests received. The Committee must include its recommendations on this issue in its report to the 2007 Regular Session of the 2007 General Assembly.

SECTION 10. Section 1 of this act is effective for taxable years beginning on or after January 1, 2006. Sections 2, 4, and 5 of this act are effective for taxable years beginning on or after January 1, 2008. Sections 3, 6, 7, and 8 of this act become effective January 1, 2008. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 1891

Short Title:	Clarify Additional Gross Premiums Tax.	(Public)
Sponsors:	Representatives Wainwright, Luebke, Church, Hill (Primary Sponsors); Carney and Wilkins.	
Referred to:	Finance.	

May 11, 2006

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE APPLICATION OF THE ADDITIONAL GROSS PREMIUMS TAXES ON FIRE AND LIGHTNING COVERAGE AND TO APPLY THE ADDITIONAL TAX TO ALL POLICIES THAT PROVIDE FIRE AND LIGHTNING COVERAGE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-228.5(d)(3) reads as rewritten:

"(d) Tax Rates; Disposition. –

...

(3) Additional Statewide Fire and Lightning Rate. – An additional tax ~~shall be applied to gross premiums on contracts of insurance applicable to fire and lightning coverage, except in the case of marine and automobile policies,~~ at the rate of one and thirty-three hundredths percent ~~(1.33%).~~(1.33%) applies to gross premiums on insurance contracts that provide fire and lightning coverage, except in the case of marine and automobile policies. The tax is a percentage of the gross premiums from the contracts, determined in accordance with the table in this subdivision. Twenty-five percent (25%) of the net proceeds of this additional tax shall be deposited in the Volunteer Fire Department Fund established in Article 87 of Chapter 58 of the General Statutes. The remaining net proceeds shall be credited to the General Fund.

Type of Insurance Contract	Taxable Percentage
Fire Loss	100%
Commercial Multiple Peril	
Nonliability portion	100%
Liability portion	0%
Homeowner's	50%
Farm Owner's	35%."

SECTION 2. G.S. 105-228.5(d)(4) reads as rewritten:

"(d) Tax Rates; Disposition. –

...

(4) Additional Local Fire and Lightning Rate. – An additional tax ~~shall be applied to gross premiums on contracts of insurance applicable to fire and lightning coverage within fire districts~~ at the rate of one-half of one percent ~~(½ of 1%).~~(0.5%) applies to gross premiums on insurance contracts that provide fire and lightning coverage within a fire district. The tax is a percentage of the gross premiums from the contracts, determined in accordance with the table in subdivision (3) of this subsection. The net proceeds shall be credited to the Department of Insurance for disbursement pursuant to G.S. 58-84-25."

SECTION 3. G.S. 105-228.5(d)(3), as amended by Section 1 of this act, reads as rewritten:

"(d) Tax Rates; Disposition. –

...

(3) Additional Statewide Fire and Lightning Rate. – An additional tax at the rate of one and thirty-three hundredths percent (1.33%) applies to gross premiums on insurance contracts that provide fire and lightning ~~coverage, except in the case of marine and automobile policies.~~ coverage. The tax is a percentage of the gross premiums from the contracts, determined in accordance with the table in this subdivision. Twenty-five percent (25%) of the net proceeds of this additional tax shall be deposited in the Volunteer Fire Department Fund established in Article 87 of Chapter 58 of the General Statutes. The remaining net proceeds shall be credited to the General Fund.

Type of Insurance Contract	Taxable Percentage
Fire Loss	100%
Commercial Multiple Peril	
Nonliability portion	100%
Liability portion	0%
Homeowner's	50%
Farm Owner's	35%
Marine	20%
Automobile	10%
Other	10%."

SECTION 4. Sections 1 and 2 of this act are effective for taxable years beginning on or after January 1, 2006. Section 3 of this act is effective for taxable years beginning on or after January 1, 2007. The remainder of this act is effective when it becomes law.

HOUSE BILL 1891:
Simplify Fire & Lightning Tax Rate

BILL ANALYSIS

Committee:	House Finance	**Date:**	July 10, 2006
Introduced by:	Reps. Wainwright, Luebke, Church, Hill	**Summary by:**	Cindy Avrette
Version:	PCS to First Edition H1891-CSRBx-77		Committee Counsel

SUMMARY: ***House Bill 1891 would specify the percentage of an insurance policy's gross premiums to which the additional gross premiums tax on fire and lightning coverage applies and it would provide that the additional tax would apply to all types of policies that insure against fire and lightning loss. The bill is a recommendation of the Revenue Laws Study Committee.***

The proposed committee substitute is a refinement of the Revenue Laws Study Committee proposal. The PCS clarifies the current law and establishes a new method of taxing insurance contracts that provide property coverage that would simplify the administration and payment of the tax for both the Department of Revenue and the insurance industry. The new method of taxation would become effective for taxable years beginning on or after January 1, 2008. The bill also directs the Revenue Laws Study Committee to continue looking at this issue during the interim and to recommend any changes that may be needed.

BILL ANALYSIS: North Carolina imposes a 1.9% tax rate on the gross premiums of most insurance policies.[1] In addition to the general rate, there is a 1.33% rate applied to the gross premiums on insurance policies that provide fire and lightning coverage. The statute specifically excludes marine and automobile policies from this additional tax. Twenty-five percent of the net proceeds of this additional tax are credited to the Volunteer Fire Department Fund[2] and the remainder is credited to the General Fund. There is also a 0.5% rate applied to gross premiums on insurance policies that provide fire and lightning coverage within fire districts. The statute does not provide any exceptions from this tax. The net proceeds of this tax are credited to the Department of Insurance.[3]

The General Assembly enacted the additional statewide fire and lightning tax in 1959. Although the statute does not provide that the tax will apply differently to different types of policies, the Department has administered the tax this way. The additional tax has been imposed on 100% of premiums from insurance that covers only fire losses and on a percentage of premiums from insurance that covers multiple risks. The percentages applied are neither statutory nor imposed by administrative rule. Within the past few years, the Department has been informally advised by both the Department of Insurance and the Attorney General's Office that the statute as written does not provide for assessing the tax

[1] Workers' compensation policies are taxed at 2.5%. HMO policies are currently taxed at a rate of 1%; however, effective January 1, 2007, these policies will be taxed at the general rate of 1.9%.

[2] Funds in the Volunteer Fire Department Fund provide matching grants to volunteer fire departments to purchase equipment and make capital improvements. In 2005, the Department received 567 applications for grants requesting matching funds of $6,577,455. The available monies in the Fund totaled only $4,369,976. The Department approved 500 applications totaling $4,365,489.

[3] Three percent (3%) of the tax proceeds are credited to the State Firemen's Association for general purposes. Two percent (2%) of the proceeds are used by the Department of Insurance for the purpose of administering the disbursement. The remaining funds are allocated among the fire districts in proportion to the amount of business done in the district and used by the local district for firemen's local relief purposes. *See Article 84 of Chapter 58 of the General Statutes.*

against only a percentage of a policy's premium. Rather, without a statutory change, it is their opinion that the tax should be applied to 100% of the premiums of any policy that includes fire and lightning coverage.

Section 1 of the bill would codify the current administrative practice of the Department by setting in statute the percentage of an insurance policy's gross premiums to which the additional tax applies. It would provide that policies covering fire loss would be taxable at 100%. It would set by statute the taxable percentages for the following types of policies:

Type of Insurance Policy	Taxable Percentage
• Non-liability portion of a Commercial Multiple Peril policy	100%
• Homeowner's Policy	50%
• Farm Owner's Policy	30%

The remainder of the bill would establish a new method of taxing insurance policies that provide property coverage, effective for taxable years beginning on or after January 1, 2008. The bill proposes broadening the base and lowering the rate applicable to insurance contracts that provide property coverage. The revenue neutral tax rate proposed in the bill is .85%. The revenue generated by the tax would be distributed in the same proportion as the current State and local fire and lightning tax revenue is distributed. Under the current method of taxation, the local tax is applied to contracts of insurance applicable to fire and lightning coverage within fire districts. A portion of the revenue from this tax is distributed to these fire districts. The PCS would not limit the application of the tax to fire districts. It would also not require the accounting by insurance companies of the amount of premiums written in fire districts. The bill proposes a new method of distribution based upon a per capita allocation among fire districts. This new method of distribution needs further review. The bill directs the Revenue Laws Study Committee to study the new method of taxation as well as the distribution of the revenues.

H1891e1-SMRB-CSRBx-77

GENERAL ASSEMBLY OF NORTH CAROLINA
Session 2005

FISCAL ANALYSIS MEMORANDUM

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

DATE: July 10, 2006

TO: Representatives Wainwright, Luebke, Church and Hill

FROM: Rodney Bizzell
Fiscal Research Division

RE: PCS HB 1891

FISCAL IMPACT

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

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES:	The bill broadens the base for the additional fire and lightning tax and establishes a revenue neutral rate. See assumptions and methodology.				
EXPENDITURES:					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Department of Revenue, NC Department of Insurance.

EFFECTIVE DATE: Section 1 is effective for taxable years beginning on or after January 1, 2006. Section 2 is effective for taxable years beginning on or after January 1, 2008. Sections 3 through 6 become effective January 1, 2008.

BILL SUMMARY:

Under the current insurance tax structure there is a supplemental state tax of 1.33% on the gross premiums of fire and lightning coverage and a local tax of 0.5% within fire districts. In the case of a policy that is exclusively for fire and lightning coverage, 100% of the supplemental tax is levied. For situations where the policy provides insurance coverage in addition to these two lines, the agencies administering the tax have applied a number of different partial percentages to the policy premiums, with the percentage differing by type of auxiliary coverage. The issue is that the percentages have been not been adopted either in statutory language or formal administrative rulings. In some cases the ratios have been tied to industry loss experience data. In recent years the Department of Revenue has received inquiries about the source of the percentages as well as requests to use individual insurance carrier experience in lieu of an overall percentage. At the

same time some legal experts feel that 100% of the supplemental tax is due on all premiums from policies that contain any fire and lightning coverage.

Section 1 of the bill would codify the current administrative practice of the Department by setting in statute the percentage of an insurance policy's gross premiums to which the additional tax applies. It would provide that policies covering fire loss would be taxable at 100% and that commercial multiple peril liability coverage would be taxable at 100%. It would provide that 50% of homeowners policy premiums and 30% of farm owners policy premiums would be subject to the tax.

Sections 2 through 6 of the bill combines the state and local taxes, broadens the base by applying the tax to 10% of policies covering auto physical damage policies, and establishes a revenue neutral tax rate based on tax revenue for FY 2005-06.

ASSUMPTIONS AND METHODOLOGY:
The first section of the bill, which is effective for taxable years after January 1, 2006, codifies current practice. There is no fiscal impact for this section of the bill.

Sections 2 through 8 are effective for taxable years beginning January 1, 2008. Section 2 repeals the additional local tax. This tax is combined with the statewide tax and the revenue is distributed by the Department of Insurance to local fire districts. The new statewide tax rate is calculated to hold fire districts harmless.

Section 3 establishes a new statewide tax rate of 0.85 percent. This rate is calculated by dividing the tax revenue for fiscal year 2005-06 for the statewide and the local fire and lightning tax by the sum of 100% of direct premiums for property coverage and 10% of direct premiums for auto physical damage for calendar year 2005. The property coverage premiums include the following lines of business: fire, farm owners multiple peril, homeowners multiple peril, non-liability portion of commercial multiple peril, ocean marine, inland marine, earthquake, private passenger automobile physical damage, commercial automobile physical damage, aircraft, and boiler and machinery. Sections 4 and 5 make conforming changes.

Sections 6, 7, and 8 provide for distribution of proceeds and use of grant funds from the Volunteer Fire Department Fund. The distribution percentages for the new combined statewide tax are calculated to provide for distributions proportional to current percentages for the State Fireman's Association (1.5%), local fire districts (23%), Volunteer Fire Department Fund (20%) and DOI Administration (0.5%). The remainder of revenue (55%) is distributed to the General Fund.

Section 9 of the bill requires the Revenue Laws Study Committee to recommend a method of distributing a portion of the tax to firemen's local relief funds. The report will be included in the report to the 2007 Session of the General Assembly.

SOURCES OF DATA: Department of Revenue, Department of Insurance.

TECHNICAL CONSIDERATIONS: None

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☐ Committee Substitute for

HB 1891 A BILL TO BE ENTITLED AN ACT TO CLARIFY THE APPLICATION OF THE ADDITIONAL GROSS PREMIUMS TAXES ON FIRE AND LIGHTNING COVERAGE AND TO APPLY THE ADDITIONAL TAX TO ALL POLICIES THAT PROVIDE FIRE AND LIGHTNING COVERAGE.

☒ With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

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

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 3

SENATE BILL 1428

Finance Committee Substitute Adopted 6/8/06
Third Edition Engrossed 6/19/06

Short Title: Various Satellite Annexations/Referendum. (Local)

Sponsors:

Referred to:

May 17, 2006

A BILL TO BE ENTITLED

AN ACT TO REMOVE THE CAP ON SATELLITE ANNEXATIONS FOR VARIOUS MUNICIPALITIES, AND TO ALLOW AN ADVISORY REFERENDUM IN THE TOWN OF CLAYTON.

The General Assembly of North Carolina enacts:

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

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

...

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

This subdivision does not apply to the Cities of Claremont, Concord, Conover, Elizabeth City, Gastonia, Greenville, Hickory, Kannapolis, Locust, Marion, Mount Airy, Mount Holly, New Bern, Newton, Oxford, Randleman, Rockingham, Sanford, Salisbury, Southport, Statesville, and Washington and the Towns of Angier, Ayden, Benson, Bladenboro, Burgaw, Calabash, Catawba, Clayton, Columbia, Creswell, Dallas, Dobson, Fuquay-Varina, Garner, Godwin, Holly Ridge, Holly Springs, Kenly, Knightdale, Landis, Leland, Louisburg, Maggie Valley, Maiden, Mayodan, Midland, Mocksville, Morrisville, Pembroke, Pine Level, Princeton, Ranlo, Rolesville, Rutherfordton, Shallotte, Smithfield, Spencer, Surf City, Swansboro, Taylorsville, Troy, Wallace, Warsaw, Waynesville, Wendell, Windsor, Yadkinville, and Zebulon."

SECTION 2. The Clayton Town Council may, by resolution, direct the Johnston County Board of Elections to conduct prior to January 1, 2008, an advisory

referendum on whether the Town should consider amending the manner by which voters elect Council members. The referendum shall be conducted in accordance with Chapter 163 of the General Statutes. The form of the question to be presented on a ballot for such a referendum shall be:

"Should the Clayton Town Council consider amending the manner by which voters elect Council members by designating that some members are elected from voting districts to be drawn by the Town Council and other members are elected at large?

[ ] YES [ ] NO"

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

SENATE BILL 1428:
Various Satellite Annexations/Referendum

BILL ANALYSIS

Committee:	House Finance	**Date:**	July 10, 2006
Introduced by:	Sen. Soles	**Summary by:**	Martha Walston
Version:	Third Edition		Committee Counsel

SUMMARY: ***The 3rd edition for Senate Bill 1428 would exempt the towns of Benson, Burgaw, Clayton, Dobson, Princeton, Smithfield, and Yadkinville from the requirement for satellite annexation that the area to be annexed, when added to the area within all other satellite corporate limits, may not exceed 10% of the area within the primary corporate limits of the annexing city. It would also authorize an advisory referendum in the Town of Clayton on whether the Town should consider amending the manner by which voters elect Council members.***

The towns of Princeton and Smithfield were removed from the cap on satellite annexations in House Bill 1989, which was ratified on July 6, 2006.

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

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

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

BILL ANALYSIS: The 3rd edition for Senate Bill 1428 would permanently exempt the towns of Benson,Burgaw, Clayton, Dobson, Princeton, Smithfield, and Yadkinville from the 5th requirement, which requires that the proposed area for satellite annexation, when added to the area within all other satellite corporate limits, not exceed 10% of the area within the primary corporate limits of the annexing city.

The purpose of the 5th requirement is designed to further the legislative goal of not allowing annexations to undermine the notion of a city as a single, contiguous, and compact entity. In practice, however, the standard has proved to be a problem for many smaller cities, because one large development by itself may easily

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

exceed the 10% limit. Because of this, the General Assembly has excepted a significant number of cities and towns (at least 51) from this 10% rule by local act.

Senate Bill 1428 would also authorize the Town of Clayton to conduct an advisory referendum on whether the Town should consider amending the manner by which voters elect Council members. The referendum must be conducted prior to January 1, 2008.

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

Trina Griffin, counsel to Senate Finance, substantially contributed to this summary.

S1428e3-SMLA

ATTACHMENT 5

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1428

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

S1428-ALA-37 [v.1]

Page 1 of 1

Date July 10 ,2006

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

Representative Hill

moves to amend the bill on page 1, line 23, by deleting "Princeton,"
and on page 1, line 24, by deleting "Smithfield".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☒Committee Substitute for

SB 1428 A BILL TO BE ENTITLED AN ACT TO REMOVE THE CAP ON SATELLITE ANNEXATIONS FOR VARIOUS MUNICIPALITIES, AND TO ALLOW AN ADVISORY REFERENDUM IN THE TOWN OF CLAYTON.

☒ With a favorable report, as amended.

(FOR JOURNAL USE ONLY)

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S D

SENATE BILL 1621
Finance Committee Substitute Adopted 6/15/06
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1621-PCS65622-LYx-109

Short Title: Special Indebtedness Projects. (Public)

Sponsors:

Referred to:

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE ADDITIONAL SPECIAL INDEBTEDNESS FOR THE CONSTRUCTION OF UP TO FIVE YOUTH DEVELOPMENT CENTERS; TO AUTHORIZE SPECIAL INDEBTEDNESS FOR THE PURCHASE OF STATE GAME LANDS; TO AUTHORIZE SPECIAL INDEBTEDNESS FOR A PARKING FACILITY IN DOWNTOWN RALEIGH; AND TO EXEMPT SALES OF TIMBER FROM THE SERVICE CHARGE IMPOSED BY THE DEPARTMENT OF ADMINISTRATION.

The General Assembly of North Carolina enacts:

SECTION 1. Section 1.2 of S.L. 2004-179 reads as rewritten:

"**SECTION 1.2.** In accordance with G.S. 142-83, this section authorizes the issuance or incurrence of special indebtedness in the maximum aggregate principal amount of ~~thirty-five million dollars ($35,000,000)~~forty-two million dollars ($42,000,000) to finance the costs of constructing up to five youth development centers totaling up to 224 beds to be operated by the Department of Juvenile Justice and Delinquency Prevention and to be located as determined by that Department. The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the cost of constructing the projects described by this section. Of the special indebtedness authorized by this section, no more than thirteen million dollars ($13,000,000) may be issued or incurred before July 1, 2005."

SECTION 2. In accordance with G.S. 142-83, this section authorizes the issuance or incurrence of special indebtedness in the maximum aggregate principal amount of twenty million dollars ($20,000,000) to finance the costs of purchasing land to be administered by the Wildlife Resources Commission as State game lands. The State, with the prior approval of the State Treasurer and the Council of State, as

provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the costs of purchasing the land described in this section.

SECTION 3. G.S. 143-64.05 reads as rewritten:

"**§ 143-64.05. ~~Definitions.~~Service charge; receipts.**

(a) The State agency for surplus property may assess and collect a service charge for the acquisition, receipt, warehousing, distribution, or transfer of any State surplus property and for the transfer or sale of recyclable material. The service charge authorized by this subsection does not apply to the transfer or sale of timber on land owned by the Wildlife Resources Commission.

(b) All receipts from the transfer or sale of surplus, obsolete, or unused equipment of State departments, institutions, and agencies that are supported by appropriations from the General Fund, except where the receipts have been anticipated for or budgeted against the cost of replacements, shall be credited by the Secretary to the Office of State Treasurer as nontax revenue.

(c) A department, institution, or agency may retain receipts derived from the transfer or sale of recyclable material, less any charge collected pursuant to subsection (a) of this section, and may use the receipts to defray the costs of its recycling activities. A contract for the transfer or sale of recyclable material to which a department, institution, or agency is a party shall not become effective until the contract is approved by the Secretary of Administration. The Secretary of Administration shall adopt rules governing the transfer or sale of recyclable material by a department, institution, or agency and specifying the conditions and procedures under which a department, institution, or agency may retain the receipts derived from the transfer or sale, including the appropriate allocation of receipts when more than one department, institution, or agency is involved in a recycling activity."

SECTION 4. In accordance with G.S. 142-83, this section authorizes the issuance or incurrence of special indebtedness in the maximum aggregate principal amount of twenty million dollars ($20,000,000) to finance the capital facility costs of a new parking deck to be constructed in downtown Raleigh. The State, with the prior approval of the State Treasurer and the Council of State, as provided in Article 9 of Chapter 142 of the General Statutes, is authorized to issue or incur special indebtedness in order to provide funds to the State to be used, together with other available funds, to pay the capital facility costs of the project described in this section.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 2

SENATE BILL 1621
Finance Committee Substitute Adopted 6/15/06

Short Title: Wage Standard - Certain Manufacturers. (Public)

Sponsors:

Referred to:

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO REVISE THE WAGE STANDARD UNDER THE BILL LEE ACT FOR CERTAIN MANUFACTURERS WHOSE BUSINESS UTILIZES A SEQUENTIAL MANUFACTURING PROCESS IN SEPARATE FACILITIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-129.4(b) reads as rewritten:

"(b) Wage Standard. – A taxpayer is eligible for the credit for creating jobs in an enterprise tier three, four, or five area if, for the calendar year the jobs are created, the average wage of the jobs for which the credit is claimed meets the wage standard and the average wage of all jobs at the location with respect to which the credit is claimed meets the wage standard. No credit is allowed for jobs not included in the wage calculation. A taxpayer is eligible for the credit for investing in machinery and equipment, the credit for research and development, or the credit for investing in real property for a central office or aircraft facility in a tier three, four, or five area if, for the calendar year the taxpayer engages in the activity that qualifies for the credit, the average wage of all jobs at the location with respect to which the credit is claimed meets the wage standard. In making the wage calculation, the taxpayer must include any positions that were filled for at least 1,600 hours during the calendar year the taxpayer engages in the activity that qualifies for the credit even if those positions are not filled at the time the taxpayer claims the credit. For a taxpayer with a taxable year other than a calendar year, the taxpayer must use the wage standard for the calendar year in which the taxable year begins. No wage standard applies to credits for activities in an enterprise tier one or two area. For the purposes of this subsection, for a fiber, yarn, or thread mill that uses a sequential manufacturing process in which separate parts of the sequential manufacturing process are performed in different facilities within the same county, the term 'location' may mean either the specific establishment or all facilities in the county in which parts of the process are performed.

Part-time jobs for which the taxpayer provides health insurance as provided in subsection (b2) of this section are considered to have an average weekly wage at least

equal to the applicable percentage times the applicable average weekly wage for the county in which the jobs will be located. There may be a period of up to 100 days between the time at which an employee begins a part-time job and the time at which the taxpayer begins to provide health insurance for that employee.

Jobs meet the wage standard if they pay an average weekly wage that is at least equal to one hundred ten percent (110%) of the applicable average weekly wage for the county in which the jobs will be located, as computed by the Secretary of Commerce from data compiled by the Employment Security Commission for the most recent period for which data are available. The applicable average weekly wage is the lowest of the following: (i) the average wage for all insured private employers in the county, (ii) the average wage for all insured private employers in the State, and (iii) the average wage for all insured private employers in the county multiplied by the county income/wage adjustment factor. The county income/wage adjustment factor is the county income/wage ratio divided by the State income/wage ratio. The county income/wage ratio is average per capita income in the county divided by the annualized average wage for all insured private employers in the county. The State income/wage ratio is the average per capita income in the State divided by the annualized average wage for all insured private employers in the State. The Department of Commerce must annually publish the wage standard for each county."

SECTION 2. This act is effective for taxable years beginning on or after January 1, 1996.

SENATE BILL 1621:
Special Indebtedness Projects

BILL ANALYSIS

Committee:	House Finance	**Date:**	July 8, 2006
Introduced by:	Sen. Hoyle	**Summary by:**	Canaan Huie
Version:	PCS to Second Edition S1621-CSLYx-109		Committee Counsel

SUMMARY: This bill would authorize the issuance of up to $20 million of special indebtedness to finance the purchase by the Wildlife Resources Commission of land to be used as State game lands, an addition $7 million of special indebtedness to complete the construction of five youth development centers, and $20 million of special indebtedness to finance a parking deck in downtown Raleigh. The bill would become effective when it became law.

CURRENT LAW: Commonly referred to as "certificates of participation," special indebtedness is nonvoted debt that is typically secured only by an interest in State property being acquired or improved. The term "special indebtedness" covers the various forms this type of debt can take: installment purchase (with or without certificates of participation), lease-purchase (with or without certificates of participation), and bonds.

The particular form of special indebtedness to be used for a given project will depend on its size, the nature of the property and the improvement, and other circumstances. Based on these circumstances, one form or another of special indebtedness may be the least expensive and most practical for the State to utilize. Article 9 of Chapter 142 of the General Statutes prohibits the issuance of special indebtedness except for projects specifically authorized by the General Assembly.

Before any type of special indebtedness may be issued or incurred, the State Treasurer must certify that debt financing may be desirable for a specific project presented to it by the Department of Administration. Next, the Council of State must give preliminary approval. If preliminary approval is obtained, the Council of State must give final approval, setting out details such as the maximum amount to be financed, the maximum maturity, and the maximum interest rates. The maximum maturity may not exceed 40 years. The State Treasurer must approve the details of the financing, finding that the amount to be borrowed is adequate and not excessive and will not require an excessive increase in any State revenues to provide for repayment, and that the special indebtedness can be incurred or issued on terms favorable to the State. Finally, the State Treasurer must report to the Joint Legislative Commission on Governmental Operations at least five days before any special indebtedness is issued or incurred.

In 2004, the General Assembly authorized the State to issue or incur up to $35 million of special indebtedness for five youth development centers with a total of 224 beds to be operated by the Department of Juvenile Justice.

Under general law, the Department of Administration may assess and collect a service charge when a State agency transfers or sells recyclable material.

BILL ANALYSIS: This bill would authorize the issuance of up to $20 million of special indebtedness to finance the purchase by the Wildlife Resources Commission of land to be used as State game lands. In addition, the bill would eliminate the service charge assessed by the Department of Administration on sales of timber. The effect of this would be to free up resources to be used to repay the indebtedness.

In addition, this bill would authorize an additional $7 million of special indebtedness to complete the five youth development centers for which special indebtedness was authorized in 2004. The increase in the amount of the authorization is due to bids on the projects coming in higher than anticipated in 2004.

Finally, this bill would authorize $20 million of special indebtedness to construct a parking deck in downtown Raleigh. The bill does not specify a location for the facility other than to say that it will be in downtown Raleigh. The deck is expected to serve State employees and visitors to the State government complex.

EFFECTIVE DATE: This bill would be effective when it became law.

BACKGROUND: The Nature Conservancy is in negotiations with International Paper to purchase over 173,000 acres of land located at 22 sites in 9 southeastern states. The North Carolina portion of the purchase would total over 76,000 acres at 4 sites (on the Chowan River, the Roanoke River and the Upper Tar River in northeastern North Carolina and on Juniper Creek in southeastern North Carolina). The Wildlife Resources Commission would then purchase from The Nature Conservancy over 64,000 acres of this land to be used as State game lands. It is anticipated that timber receipts from the land will be sufficient to pay the special indebtedness authorized by this bill.

S1621e2-SMLY-CSLYx-109

GENERAL ASSEMBLY OF NORTH CAROLINA
Session 2005

FISCAL ANALYSIS MEMORANDUM

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

DATE: July 10, 2006

TO: House Committee on Finance

FROM: Jim Klingler
Fiscal Research Division

RE: SB 1621 State Facilities Special Indebtedness

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
EXPENDITURES:					
WRC					
Debt Service	575,000	2,121,250	2,063,750	2,006,250	1,948,750
Operating & Capital	575,199	407,387	420,712	434,488	448,040
WRC Total	**1,150,199**	**2,528,637**	**2,484,462**	**2,440,738**	**2,396,790**
DJJDP					
Debt Service	$201,250	$742,438	$722,313	$702,188	$682,063
Operating and Maint.			No Impact		
DOA					
Debt Service	$575,000	$2,121,250	$2,063,750	$2,006,250	$1,948,750
POSITIONS (cumulative):					
WRC	**8**	**8**	**8**	**8**	**8**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Wildlife Resources Commission, Department of Juvenile Justice and Delinquency Prevention, and the Department of Administration

EFFECTIVE DATE: Effective when the bill becomes law.

BILL SUMMARY:

Wildlife Resources Commission

Authorizes the issuance of special indebtedness to finance the capital facility costs for the purchase of land by the wildlife resources commission. The proposed bill also exempts the wildlife resources commission from paying a service charge to the Department of Administration for any receipts generated by the Commission from the sale of timber.

Department of Juvenile Justice and Delinquency Prevention

Session Law 2004-179 authorized the issuance of $35 million in special indebtedness in the form of certificates of participation for the construction of five new youth development centers in the Department of Juvenile Justice and Delinquency Prevention. This proposed bill revises S.L. 2004-179 to increase the authorization by $7 million. The Department has bid three of the centers out for construction. Based on the bid submissions from interested construction firms, the Department is anticipating needs the increased authorization to have sufficient funds to complete the last two youth development centers.

Department of Administration

In accordance with G.S. 142-83, the proposed bill authorizes the issuance of $20 million in special indebtedness for the planning and construction of a new parking deck. The 1200-space parking deck is planned to be located in Raleigh and would support the State Government Complex in the downtown. The Governor requested the parking deck as part of his Recommended Budget to the 2006 Session of the 2005 General Assembly. The Governor's justification for the new deck is the replacement of 1211 parking spaces that will be lost as part of the sale of the State-owned Blount Street property.

ASSUMPTIONS AND METHODOLOGY:

Wildlife Resources Commission

The proposed land acquisition involves a total of 77,090 acres currently owned by the International Paper Corporation and located in four separate tracts. The total estimated cost for purchasing the lands is $80 million, and the Nature Conservancy has approached the State to fund the purchase in the following manner:

- $45 million from the Clean Water Management Trust Fund
- $10 million from the Natural Heritage Trust Fund
- $5 million from the Parks and Recreation Trust Fund
- $20 million from the Wildlife Resources Commission (WRC)

SB 1892 authorizes the Governor and the Council of State to issue special indebtedness in the amount of $20 million for WRC. WRC would purchase roughly 66,000 acres of International Paper lands through a land deal brokered by the Nature Conservancy. The purchase of all 77,090 acres would occur over three years.

The four tracts available for purchase include:

- 22,009 acres along the Roanoke River
- 20,749 acres of the Upper Tar River watershed
- 18,341 acres along Juniper Creek
- 15,464 acres along the Chowan River

The lands proposed for allocation to WRC would be lands that are contiguous or approximate to existing game lands in the WRC system.

Debt Service - The debt service schedule in Chart 1 was developed by the Office of State Treasurer based on the following assumptions:

- Certificates of participation would be issued
- All $20 million would be issued in Fall 2006
- 5.57% average interest rate
- 20-year term

Wildlife Resources Commission Debt Service			
Fiscal Year	**Principal**	**Interest**	**Debt Service Payment**
2006-07		575,000	575,000
2007-08	1,000,000	1,121,250	2,121,250
2008-09	1,000,000	1,063,750	2,063,750
2009-10	1,000,000	1,006,250	2,006,250
2010-11	1,000,000	948,750	1,948,750
2011-12	1,000,000	891,250	1,891,250
2012-13	1,000,000	833,750	1,833,750
2013-14	1,000,000	776,250	1,776,250
2014-15	1,000,000	718,750	1,718,750
2015-16	1,000,000	661,250	1,661,250
2016-17	1,000,000	603,750	1,603,750
2017-18	1,000,000	546,250	1,546,250
2018-19	1,000,000	488,750	1,488,750
2019-20	1,000,000	431,250	1,431,250
2020-21	1,000,000	373,750	1,373,750
2021-22	1,000,000	316,250	1,316,250
2022-23	1,000,000	258,750	1,258,750
2023-24	1,000,000	201,250	1,201,250
2024-25	1,000,000	143,750	1,143,750
2025-26	1,000,000	86,250	1,086,250
2026-27	1,000,000	28,750	1,028,750
TOTALS	**20,000,000**	**12,075,000**	**32,075,000**

Revenue Estimate – The WRC has proposed to pay for the debt service, operating, and capital costs from the sale of timber on land acquired through SB 1892 and other State lands allocated to WRC. Chart 2 presents the revenue estimate provided by WRC. The following assumptions were used to develop Chart 2:

- **IP Lands Projected Revenue** – Timber receipts estimate developed by WRC for the project's feasibility study
- **WRC Lands Projected Revenue** – Timber receipts estimate developed by WRC for other State game lands to be included in the feasibility study

- **Total Revised Revenue** – The sum of all projected receipts. These feasibility study estimates are revised based on WRC's experience with timber sales from FY 2000-01 to FY 2004-05. **The revenue estimate is revised up 1.5 times.**

Wildlife Resources Commission Revenue Projection			
Fiscal Year	IP Lands Projected Revenue	WRC Lands Projected Revenue	Total Revised Revenue
2006-07	$263,047	$1,779,315	$3,063,543
2007-08	$263,047	$1,172,861	$2,153,862
2008-09	$263,047	$1,267,998	$2,296,568
2009-10	$263,047	$1,092,790	$2,033,756
2010-11	$263,047	$929,610	$1,788,986
2011-12	$500,000	$928,915	$2,143,373
2012-13	$822,700	$796,418	$2,428,677
2013-14	$822,700	$706,553	$2,293,880
2014-15	$822,700	$809,188	$2,447,832
2015-16	$822,700	$818,609	$2,461,964
2016-17	$822,700	$690,121	$2,269,232
2017-18	$1,225,000	$832,315	$3,085,973
2018-19	$1,225,000	$784,000	$3,013,500
2019-20	$1,280,000	$993,715	$3,410,573
2020-21	$1,280,000	$700,565	$2,970,848
2021-22	$1,300,000	$641,000	$2,911,500
2022-23	$1,300,000	$787,315	$3,130,973
2023-24	$1,300,000	$598,000	$2,847,000
2024-25	$1,534,868	$944,715	$3,719,375
2025-26	$1,534,868	$711,565	$3,369,650
2026-27	$1,534,868	$851,000	$3,578,802
Totals	**$19,443,339**	**$18,836,568**	**$57,419,861**

Operating and Capital Improvements Costs - According to WRC, the purchase of this land will result in operating cost increases associated with managing the new game lands. WRC anticipates needing eight new positions to manage the new game lands and associated equipment. WRC also anticipates the construction of new depots on the lands to serve as workspace for the new personnel. Please see Chart 3 for a five year estimate of new personnel costs, equipment and capital costs. Operating and capital costs are proposed to be 100% receipt supported from the sale of timber on State game lands.

Wildlife Resources Commission Operating and Capital Expenditures		
Fiscal Year	Personnel Costs	Capital / Equipment / Maintenance
2006-07	$311,999	$263,200
2007-08	$323,543	$83,844

Fiscal Year	Personnel Costs	Capital / Equipment / Maintenance
2008-09	$335,191	$85,521
2009-10	$347,257	$87,231
2010-11	$359,064	$88,976
Total	**$1,677,054**	**$608,772**

Cash Flow - WRC proposes to service the special indebtedness authorized in SB 1892 through receipts generated by the sale of timber on State game lands. WRC also proposes funding all operating expenditures and capital improvements through the same revenue sources. **When estimate receipts are compared with proposed expenditure impacts, WRC is projected to have insufficient timber receipts for fiscal years 2011-12 through 2016-17.** In each of those years, WRC would produce enough timber receipts to service the debt, but not cover all projected operating and capital expenditures. WRC would need to use other receipts available to the Commission or seek assistance from the General Fund. Please see Chart 4 for details.

Wildlife Resources Commission Cash Flow Analysis				
Fiscal Year	**Projected Revenue**	**Existing & New Operating & Capital Costs**	**Debt Service**	**Projected Cumulative Year-end Cash Balance**
2005-06		$631,192		**$3,109,096**
2006-07	$3,063,543	$1,215,859	$575,000	**$4,381,780**
2007-08	$2,153,862	$1,057,657	$2,121,250	**$3,356,736**
2008-09	$2,296,568	$1,080,735	$2,063,750	**$2,508,818**
2009-10	$2,033,756	$1,104,413	$2,006,250	**$1,431,910**
2010-11	$1,788,986	$1,128,013	$1,948,750	**$144,133**
2011-12	$2,143,373	$1,342,200	$1,891,250	**($945,945)**
2012-13	$2,428,677	$1,176,991	$1,833,750	**($582,064)**
2013-14	$2,293,880	$1,202,403	$1,776,250	**($684,774)**
2014-15	$2,447,832	$1,228,453	$1,718,750	**($499,371)**
2015-16	$2,461,964	$1,255,160	$1,661,250	**($454,447)**
2016-17	$2,269,232	$1,482,542	$1,603,750	**($817,061)**
2017-18	$3,085,973	$1,310,619	$1,546,250	**$229,103**
2018-19	$3,013,500	$1,339,411	$1,488,750	**$414,443**
2019-20	$3,410,573	$1,368,937	$1,431,250	**$1,024,828**
2020-21	$2,970,848	$1,399,221	$1,373,750	**$1,222,705**
2021-22	$2,911,500	$1,640,282	$1,316,250	**$1,177,673**
2022-23	$3,130,973	$1,462,144	$1,258,750	**$1,587,751**
2023-24	$2,847,000	$1,494,831	$1,201,250	**$1,738,670**
2024-25	$3,719,375	$1,528,365	$1,143,750	**$2,785,930**
2025-26	$3,369,650	$1,562,772	$1,086,250	**$3,506,557**
2026-07	$3,578,802	$1,598,078	$1,028,750	**$4,458,532**
Total	**$57,419,861**	**$28,610,278**	**$32,075,000**	

Department of Juvenile Justice and Delinquency Prevention

The additional $7 million in debt authority will increase the debt service requirements for the General Fund. The special indebtedness model created by the Office of State Treasurer was used by the Fiscal Research Division to generate the following debt service schedule. These are the assumptions used in the model:

- $7 million in principal
- 20-year term to pay back the principal
- Issued in Fall 2006
- 5.75% average interest rate

Debt Service for Increased Special Indebtedness for the Youth Development Centers			
Fiscal Year	**Principal**	**Interest**	**Debt Service Payment**
2006-07		201,250	201,250
2007-08	350,000	392,438	742,438
2008-09	350,000	372,313	722,313
2009-10	350,000	352,188	702,188
2010-11	350,000	332,063	682,063
2011-12	350,000	311,938	661,938
2012-13	350,000	291,813	641,813
2013-14	350,000	271,688	621,688
2014-15	350,000	251,563	601,563
2015-16	350,000	231,438	581,438
2016-17	350,000	211,313	561,313
2017-18	350,000	191,188	541,188
2018-19	350,000	171,063	521,063
2019-20	350,000	150,938	500,938
2020-21	350,000	130,813	480,813
2021-22	350,000	110,688	460,688
2022-23	350,000	90,563	440,563
2023-24	350,000	70,438	420,438
2024-25	350,000	50,313	400,313
2025-26	350,000	30,188	380,188
2026-27	350,000	10,063	360,063
TOTALS	**$7,000,000**	**$4,226,250**	**$11,226,250**

This increased special indebtedness authority would not increase the scope of the capital projects. As a result, no increase in operating and maintenance costs is expected from this increase in debt authorization. **The only impact to the General Fund from this proposed bill is the increase debt service requirements.**

Department of Administration

Debt Service Requirements – The special indebtedness model created by the Office of State Treasurer was used by the Fiscal Research Division to generate the following debt service schedule. These are the assumptions used in the model:

- $20 million in principal
- 20-year term to pay back the principal
- Issued in Fall 2006
- 5.75% average interest rate

Department of Administration Debt Services			
Fiscal Year	**Principal**	**Interest**	**Debt Service Payment**
2006-07		$575,000	$575,000
2007-08	$1,000,000	$1,121,250	$2,121,250
2008-09	$1,000,000	$1,063,750	$2,063,750
2009-10	$1,000,000	$1,006,250	$2,006,250
2010-11	$1,000,000	$948,750	$1,948,750
2011-12	$1,000,000	$891,250	$1,891,250
2012-13	$1,000,000	$833,750	$1,833,750
2013-14	$1,000,000	$776,250	$1,776,250
2014-15	$1,000,000	$718,750	$1,718,750
2015-16	$1,000,000	$661,250	$1,661,250
2016-17	$1,000,000	$603,750	$1,603,750
2017-18	$1,000,000	$546,250	$1,546,250
2018-19	$1,000,000	$488,750	$1,488,750
2019-20	$1,000,000	$431,250	$1,431,250
2020-21	$1,000,000	$373,750	$1,373,750
2021-22	$1,000,000	$316,250	$1,316,250
2022-23	$1,000,000	$258,750	$1,258,750
2023-24	$1,000,000	$201,250	$1,201,250
2024-25	$1,000,000	$143,750	$1,143,750
2025-26	$1,000,000	$86,250	$1,086,250
2026-27	$1,000,000	$28,750	$1,028,750
TOTALS	**$20,000,000**	**$12,075,000**	**$32,075,000**

Cash Flow Analysis – Parking services are considered an enterprise and are fully funded by parking fees. The debt service requirements for this new parking deck are proposed to be fully funded by receipts generated by public parking operations. The following revenue assumptions were used to generate the cash flow analysis. The assumptions were provided by the Office of State Budget and Management and the Department of Administration.

- **Anticipating $500,000 in available annual cash balance from current parking operations.** Parking operations have reverted $200,000-$300,000 to the General Fund in each of the past five fiscal years. The Department of Administration is anticipating further efficiencies, including the elimination of maintenance costs for the Blount Street parking lots. The Administration is also close to retiring some existing parking debt.
- All $500,000 in anticipated cash balances would be applied to debt service for the new deck before being applied to other needs, such as increase operating costs.
- $500,000 in cash balances would be available beginning in FY 2006-07.
- Visitor rates will be increased in FY 2006-07 from $0.50 to $1.00 an hour and from a $4.00 to an $8.00 maximum for the day. **The rate increase is expected to generate an additional $400,000 per year.**
- Employee parking rates will be increase by $10.00 per month. Parking rates are currently $10.00 for uncovered spaces and $15.00 for covered spaces. The new rates would be $20.00 and $25.00 respectively. **The new rates are projected to generate $720,000 annually.**
- The new parking deck will not result in a net gain in parking spots, but the rate increase for parking charged to State employees will result in an increase in revenues for parking operations. **A $10.00 increase in employee parking rates for 1200 new spaces is anticipated to generate $216,000.**
- Rate increase would become effective in FY 2006-07.
- All rate increases are assumed to be static over the term of the indebtedness.
- The new parking deck would be operational by July 1, 2008.

Department of Administration Cash Flow Analysis

Fiscal Year	Anticipated Parking Receipts Cash Balance	Visitor Rate Increase	Employee Parking Increase	New Parking Deck Receipts	Total Availability	Debt Service	Balance
2006-07	$500,000	$400,000	$720,000	$0	$1,620,000	$575,000	**$1,045,000**
2007-08	$500,000	$400,000	$720,000	$0	$1,620,000	$2,121,250	**$543,750**
2008-09	$500,000	$400,000	$720,000	$216,000	$1,836,000	$2,063,750	**$316,000**
2009-10	$500,000	$400,000	$720,000	$216,000	$1,836,000	$2,006,250	**$145,750**
2010-11	$500,000	$400,000	$720,000	$216,000	$1,836,000	$1,948,750	**$33,000**
2011-12	$500,000	$400,000	$720,000	$216,000	$1,836,000	$1,891,250	**($22,250)**
2012-13	$500,000	$400,000	$720,000	$216,000	$1,836,000	$1,833,750	**$2,250**
2013-14	$500,000	$400,000	$720,000	$216,000	$1,836,000	$1,776,250	**$62,000**
2014-15	$500,000	$400,000	$720,000	$216,000	$1,836,000	$1,718,750	**$179,250**
2015-16	$500,000	$400,000	$720,000	$216,000	$1,836,000	$1,661,250	**$354,000**
2016-17	$500,000	$400,000	$720,000	$216,000	$1,836,000	$1,603,750	**$586,250**
2017-18	$500,000	$400,000	$720,000	$216,000	$1,836,000	$1,546,250	**$876,000**
2018-19	$500,000	$400,000	$720,000	$216,000	$1,836,000	$1,488,750	**$1,223,250**
2019-20	$500,000	$400,000	$720,000	$216,000	$1,836,000	$1,431,250	**$1,628,**

Fiscal Year	Anticipated Parking Receipts Cash Balance	Visitor Rate Increase	Employee Parking Increase	New Parking Deck Receipts	Total Availability	Debt Service	Balance
2020-21	$500,000	$400,000	$720,000	$216,000	$1,836,000	$1,373,750	**$2,090,250**
2021-22	$500,000	$400,000	$720,000	$216,000	$1,836,000	$1,316,250	**$2,610,000**
2022-23	$500,000	$400,000	$720,000	$216,000	$1,836,000	$1,258,750	**$3,187,250**
2023-24	$500,000	$400,000	$720,000	$216,000	$1,836,000	$1,201,250	**$3,822,000**
2024-25	$500,000	$400,000	$720,000	$216,000	$1,836,000	$1,143,750	**$4,514,250**
2025-26	$500,000	$400,000	$720,000	$216,000	$1,836,000	$1,086,250	**$5,264,000**
2026-27	$500,000	$400,000	$720,000	$216,000	$1,836,000	$1,028,750	**$6,071,250**
TOTALS	**$10,500,000**	**$8,400,000**	**$15,120,000**	**$4,104,000**	**$38,124,000**	**$32,075,000**	

The revenue assumptions provided by the Office of State Budget and Management and the Department of Administration result in sufficient revenues to fund the debt service requirements of the new parking deck in each of the years of the analysis, except FY 2011-12. In that fiscal year, the cash flow analysis anticipates a $22,250 shortfall.

SOURCES OF DATA: Office of State Treasurer, Wildlife Resources Commission, the Nature Conservancy, Office of the Governor, Office of State Budget and Management, and the Department of Administration.

TECHNICAL CONSIDERATIONS: None

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☒Committee Substitute for

SB 1621 A BILL TO BE ENTITLED AN ACT TO REVISE THE WAGE STANDARD UNDER THE BILL LEE ACT FOR CERTAIN MANUFACTURERS WHOSE BUSINESS UTILIZES A SEQUENTIAL MANUFACTURING PROCESS IN SEPARATE FACILITIES.

☒ With a favorable report as to House committee substitute bill, which changes the title, unfavorable as to Senate committee substitute bill.

(FOR JOURNAL USE ONLY)

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

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1895

Committee Substitute Favorable 6/12/06

PROPOSED COMMITTEE SUBSTITUTE H1895-CSRD-49 [v.9]

7/10/2006 2:54:15 PM

Short Title: Establish High-Risk Pool. (Public)

Sponsors:

Referred to:

May 11, 2006

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE NORTH CAROLINA HEALTH INSURANCE RISK POOL AND TO APPROPRIATE FUNDS THEREFOR.

The General Assembly of North Carolina enacts:

SECTION 1.1. Article 50 of Chapter 58 of the General Statutes is amended by adding a new Part to read:

"Part 7. North Carolina Health Insurance Risk Pool.

"**§ 58-50-245. Definitions.**

For the purposes of this Part:

(1) "Administrator" means the Pool Administrator selected by the Executive Director in accordance with this Part.

(2) "Benefit plan" means coverage offered by the Pool to eligible individuals.

(3) "Board" means the Board of Directors of the Pool.

(4) "Commissioner" means the Commissioner of Insurance.

(5) "Covered person" means any individual resident of this State, excluding dependents, who is eligible to receive health benefits from any insurer.

(6) "Church plan" has the meaning given that term under section 3(33) of the Employee Retirement Income Security Act of 1974.

(7) "Creditable coverage" has the same meaning as prescribed in G.S. 58-68-30(c)(1).

(8) "Dependent" means a resident spouse or unmarried child under the age of 19 years, a child who is a full-time student under the age of 23 years and who is financially dependent upon the parent, a child who is over 18 years of age and for whom a person may be obligated to pay child

support, or a child of any age who is disabled and dependent upon the parent.

(9) "Executive Director" means the Executive Administrator of the Teachers' and State Employees' Comprehensive Major Medical Plan.

(10) "Family member" means a parent, grandparent, brother, sister, or child of a dependent residing with the insured.

(11) "Federally defined eligible individual" has the same meaning as "eligible individual" as prescribed in G.S. 58-68-60(b).

(12) "Governmental plan" has the same meaning as prescribed in G.S. 58-68-60(h)(2).

(13) "Group health plan" means an employee welfare benefit plan as defined in section 3(1) of the Employee Retirement Income Security Act of 1974 to the extent that the plan provides medical care, including items and services paid for as medical care to employees or their dependents, as defined under the terms of the plan directly or through insurance, reimbursement, or otherwise.

(14) "Health insurance coverage" shall have the same meaning as prescribed in G.S. 58-68-25(a)(5). Health insurance coverage does not include benefits described in G.S. 58-68-25(b).

(15) "Insurance arrangement" means a plan, program, contract, or other arrangement through which health care services are provided by an employer to its officers or employees but does not include health care services covered through an insurer.

(16) "Insured" means an individual who is eligible to receive benefits from the Pool. The term "insured" includes dependents and family members, as applicable.

(17) "Insurer" means any entity that provides health insurance coverage in this State. For the purposes of this Part, insurer includes:

a. An insurance company;

b. A hospital or medical service corporation;

c. A health maintenance organization;

d. A multiple employer welfare arrangement;

e. A third-party administrator or claims processor;

f. An administrative service organization;

g. Any other nongovernmental entity providing a health benefit plan subject to State insurance regulation; and

h. The Teachers' and State Employees' Comprehensive Major Medical Plan as set forth in Parts 1, 2 and 3 of Article 3 of Chapter 135 of the General Statutes.

(18) "Medical care" means amounts paid for:

a. The diagnosis, cure, mitigation, treatment, or prevention of disease, or amounts paid for the purpose of affecting any structure or function of the body;

b. Transportation primarily for and essential to medical care referred to in sub-subdivision a. of this subdivision; and

c. Insurance covering medical care referred to in sub-subdivisions a. and b. of this subdivision.

(19) "Plan of Operation" means the articles, bylaws, and operating rules and procedures adopted by the Board in accordance with this Part.

(20) "Pool" means the North Carolina Health Insurance Risk Pool.

(21) "Resident" means an individual who:

a. Has been legally domiciled in this State for a period of at least 30 days, except that for a federally defined eligible individual, there shall not be a 30-day requirement;

b. Is legally domiciled in this State on the date of application to the Pool and who is eligible for enrollment in the Pool as a result of the Health Insurance Portability and Accountability Act of 1996; or

c. Is legally domiciled in this State on the date of application to the Pool and is eligible for the credit for health insurance costs under section 35 of the Internal Revenue Code of 1986.

(22) "Significant break in coverage" means a period of 63 consecutive days during all of which the individual does not have any creditable coverage, except that neither a waiting period nor an affiliation period is taken into account in determining a significant break in coverage.

(23) "Trade Adjustment Assistance Program" (TAA) means Title II of the Trade Act of 2002, P.L. 107-210.

"**§ 58-50-250. Risk Pool established; board of directors; plan of operation.**

(a) High-Risk Pool Established. – There is hereby created within the Teachers' and State Employees' Comprehensive Major Medical Plan the North Carolina Health Insurance Risk Pool. The Pool shall operate under the supervision and control of the Board of Directors of the Pool.

(b) Board Appointment; Membership. – The Board of the North Carolina Health Insurance Risk Pool shall consist of the Commissioner of Insurance, who shall serve as an ex officio nonvoting member of the Board, and nine members appointed as follows:

(1) Two members of the general public who are not employed by or affiliated with an insurance company or plan, group hospital, or other health care provider, and can reasonably be expected to qualify for coverage in the Pool. Members of the general public include individuals whose only affiliation with health insurance or health care coverage is as a covered member. The two members of the general public shall be appointed as follows:

a. One member upon the recommendation of the President Pro Tempore of the Senate.

b. One member upon the recommendation of the Speaker of the House of Representatives.

(2) Seven members appointed by the Executive Director, as follows:

a. Two who are insurers, at least one of whom covers the largest number of persons in the State.
b. One who is licensed to sell health insurance in this State.
c. Two who represent the medical provider community, one as recommended by the North Carolina Medical Society and one as recommended by the North Carolina Hospital Association.
d. One who represents small business, as recommended by the North Carolina Citizens for Business and Industry.
e. One who is either a health policy researcher or a health economist with experience relating to the operation of high-risk insurance pools.

(c) Board; Terms of Appointment; Vacancies; Compensation. – The initial Board members shall be appointed as follows: three of the members to serve a term of three years; three of the members to serve a term of one year; and three of the members to serve a term of two years. Subsequent Board members shall serve for terms of three years. A Board member's term shall continue until the member's successor is appointed. The Executive Director shall appoint a chair to serve for the initial two years of the Plan's operation. Subsequent chairs shall be elected by a majority vote of the Board members and shall serve for two-year terms. The Executive Director shall fill vacancies in membership and may remove members from the Board for cause. Board members shall not be compensated in their capacity as Board members but shall be reimbursed for reasonable expenses incurred in the necessary performance of their duties.

(d) Plan of Operation. – The Board shall submit to the Executive Director a Plan of Operation for the Pool and any amendments necessary or suitable to assure the fair, reasonable, and equitable administration of the Plan of Operation. The Plan of Operation shall become effective upon approval in writing by the Executive Director consistent with the date on which the coverage under this Part must be made available. If the Board fails to submit a suitable Plan of Operation within 180 days after the appointment of the Board, or at any time thereafter fails to submit suitable amendments to the Plan of Operation, the Executive Director shall adopt temporary rules necessary or advisable to effectuate the provisions of this section. The rules shall continue in force until modified by the Executive Director or superseded by a Plan of Operation submitted by the Board and approved by the Executive Director. The Plan of Operation shall:

(1) Establish procedures for operation of the Pool.
(2) Establish procedures for selecting a Pool Administrator in accordance with G.S. 58-50-255.
(3) Establish procedures to create a fund for administrative expenses, which shall be managed by the Board.
(4) Establish procedures for the collection, handling, disbursing, accounting, assessing and auditing of assets, monies, and claims of the Pool and the Pool Administrator.
(5) Develop and implement a program to publicize the existence of the Pool, the eligibility requirements, and procedures for enrollment,

availability of State premium subsidies, and to maintain public awareness of the Pool.

(6) Establish procedures under which applicants and participants may have grievances reviewed by a grievance committee appointed by the Executive Director in accordance with G.S. 58-50-295.

(7) Establish procedures for identifying and confirming income levels of applicants for Pool coverage who are eligible to receive a State premium subsidy, if a State premium subsidy is available.

(8) Provide for other matters as may be necessary and proper for the execution of the Executive Director's powers, duties, and obligations under this Part.

(e) The Pool shall have the general powers and authority granted under the laws of this State to health insurers and the specific authority to do all of the following:

(1) Enter into contracts as are necessary or proper to carry out the provisions and purposes of this Part, including the authority, with the approval of the Executive Director, to enter into contracts with similar plans of other states for the joint performance of common administrative functions or with persons or other organizations for the performance of administrative functions.

(2) Sue or be sued, including taking any legal actions necessary or proper to recover or collect assessments due the Pool.

(3) Take legal action as necessary to:

a. Avoid the payment of improper claims against the Pool or the coverage provided by or through the Plan.

b. Recover any amounts erroneously or improperly paid by the Plan.

c. Recover any amounts paid by the Pool as a result of mistake of fact or law.

d. Recover other amounts due the Pool.

(4) Establish rates and rate schedules in accordance with this Part.

(5) Issue policies of insurance in accordance with the requirements of this Part.

(6) Appoint appropriate legal, actuarial, and other committees as necessary to provide technical assistance in the operation of the Pool, policy, and other contract design, and any other function within the Pool's authority.

(7) Borrow money to effect the purposes of the Pool. Any notes or other evidence of indebtedness of the Pool not in default are legal investments for insurers and may be carried as admitted assets.

(8) Establish policies, conditions, and procedures for reinsuring risks of participating insurers desiring to issue Pool coverage in their own name. Provision of reinsurance shall not subject the Pool to any of the capital or surplus requirements, if any, otherwise applicable to reinsurers.

(9) Employ and fix the compensation of employees.
(10) Prepare and distribute certificate of eligibility forms and enrollment instruction forms to insurance producers and to the general public.
(11) Provide for reinsurance of risks incurred by the Pool.
(12) Issue additional types of health insurance policies to provide optional coverage, including Medicare supplemental insurance coverage.
(13) Provide for and employ cost containment measures and requirements including preadmission screening, second surgical opinion, concurrent utilization review, disease management, individual case management, and other commonly used benefit plan design features for the purpose of making health insurance coverage offered by the Pool more cost-effective.
(14) Design, utilize, contract, or otherwise arrange for the delivery of cost-effective health care services, including establishing or contracting with preferred provider organizations, health maintenance organizations, and other limited network provider arrangements.
(15) Adopt bylaws, policies, and procedures as may be necessary or convenient for the implementation of this Part and the operation of the Pool.

(f) The Board shall operate the Pool in a manner so that the estimated cost of providing health insurance coverage during any fiscal year is not anticipated to exceed the total income the Pool expects to receive from policy premiums and other revenue available to the Pool. The Board may impose a cap on enrollment or may suspend enrollment for an indefinite period if the Board finds that estimated costs are anticipated to exceed income, except that any enrollment cap or suspension shall not apply to federally defined eligible individuals who are eligible to enroll in the Pool pursuant to G.S. 58-50-265(5).

(g) The Board shall make an annual report to the Speaker of the House of Representatives and to the President Pro Tempore of the Senate. The report shall summarize the activities of the Pool in the preceding calendar year, including the net written and earned premiums, benefit plan enrollment, the expense of administration, and the paid and incurred losses.

(h) Neither the Board nor its employees are liable for any obligations of the Pool. There shall be no liability on the part of and no cause of action of any nature shall arise against the Pool or its agents or employees, the Board, the Executive Director, the Commissioner, or his representatives for any action taken by them in good faith in the performance of their powers and duties under this Part. The Board and the Teachers' and State Employees' Comprehensive Major Medical Plan may provide in their bylaws or rules for indemnification of, and legal representation for, its members and employees.

(i) The members of the Board shall comply with the provisions of G.S. 14-234 prohibiting conflicts of interest.

"**§ 58-50-255. Administrator.**

(a) The Board shall select through a competitive bidding process one or more authorized insurers or a third-party administrator to administer the Pool. The Board

shall evaluate bids submitted based on criteria established by the Board. The criteria shall allow for the comparison of information about each bidding administrator and selection of a Pool Administrator based on at least the following:

(1) Proven ability to handle health insurance coverage to individuals.
(2) Efficiency and timeliness of the claim processing procedures.
(3) Estimated total charges for administering the Pool.
(4) Ability to apply effective cost containment programs and procedures and to administer the Pool in a cost-efficient manner.
(5) Financial condition and stability.

(b) The Administrator shall serve for a period specified in the contract between the Executive Director and the Administrator subject to removal for cause and subject to any terms, conditions, and limitations of the contract between the Executive Director and the Administrator. At least one year before the expiration of each period of service by an Administrator, the Board shall invite eligible entities, including the current Administrator, to submit bids to serve as the Administrator. Selection of the Administrator for the succeeding period shall be made at least six months before the end of the current period.

(c) The Administrator shall perform such functions relating to the Pool as may be assigned to it, including:

(1) Verification of eligibility.
(2) Payment of claims.
(3) Establishment of a premium billing procedure for collection of premiums from individuals covered under the Pool.
(4) Other necessary functions to assure timely payment of benefits to covered persons under the Pool.

(d) The Administrator shall submit regular reports to the Board regarding the operation of the Pool. The contract between the Executive Director and the Administrator shall specify the frequency, content, and form of the report.

(e) Following the close of each calendar year, the Administrator shall determine net written and earned premiums, the expense of administration, and the paid and incurred losses for the year and report this information to the Board on a form prescribed by the Executive Director.

(f) The Administrator shall be paid as provided in the contract between the Executive Director and the Administrator.

"**§ 58-50-260. Risk Pool rates and policy forms.**

(a) The Pool shall adopt and modify, as appropriate, rates, rate schedules, rate adjustments, expense allowances, agents' referral fees, claim reserve formulas, and any other actuarial function appropriate to the operation of the Pool. Rates and rate schedules may be adjusted for appropriate factors such as age, sex, and geographic variation in claim cost and shall take into consideration appropriate rating factors in accordance with established actuarial and underwriting practices.

(b) The Pool shall determine the standard risk rate by considering the premium rates charged by other insurers offering health insurance coverage to individuals. The standard risk rate shall be established using reasonable actuarial techniques and shall

reflect anticipated experience and expenses for the coverage. Pool rates shall be one hundred fifty percent (150%) of rates established as applicable for individual standard rates.

(c) The Pool shall provide for premium discounts for covered individuals who are nonsmokers or who are actively participating in a smoking cessation program. Approval of smoking cessation programs, criteria for active participation in smoking cessation programs, and discount rates shall be established by the Board, subject to the approval of the Commissioner.

(d) Provider reimbursement rates under Pool coverage shall be limited to the rates allowed for providers under the Medicare Program.

(e) The Pool shall submit all rates and rate schedules and amendments thereto to the Commissioner for approval, and the Commissioner shall approve the rates and rate schedules before the Pool may use them. The Commissioner, in evaluating the rates and rate schedules, shall consider the factors provided in this section. The Pool shall provide all individuals enrolled in the Pool with at least 45 days notice of any change in Pool rates or rate schedules.

(f) The Pool shall submit all policy forms to the Commissioner for approval, and the Commissioner shall approve the forms before the Pool may use them. Except for any provisions that are specifically treated otherwise under this Part, the provisions of Chapter 58 of the General Statutes that apply to benefit plans and policy forms of health insurers generally shall apply to the benefit plans offered and policy forms used by the Pool.

"**§ 58-50-265. Eligibility for Pool coverage.**

(a) Any individual who is and continues to be a resident of this State is eligible for Pool coverage if evidence is provided of:

(1) A notice of rejection or refusal to issue substantially similar health insurance coverage for health reasons by an insurer. A rejection or refusal by an insurer offering only stop-loss, excess loss, or reinsurance coverage with respect to the applicant is not sufficient evidence of eligibility;

(2) An offer to issue health insurance coverage only with a conditional rider that limits coverage for the individual's high-risk medical condition;

(3) A refusal by an insurer to issue health insurance coverage except at a rate exceeding the Pool rate;

(4) A diagnosis of the individual with one of the medical or health conditions listed by the Board in accordance with this section. An individual diagnosed with one or more of these conditions is eligible for Pool coverage without applying for other health insurance coverage;

(5) In the case of a federally defined eligible individual, the individual's maintenance of health insurance coverage, of which the most recent coverage was through an employer-sponsored plan, for the previous 18

months with no gap in coverage greater than 63 days and exhaustion of any available COBRA or State continuation benefits; or

(6) An individual who is legally domiciled in this State and is eligible for the credit for health insurance costs under the Trade Adjustment Assistance Reform Act of 2002, section 35 of the Internal Revenue Code of 1986.

(b) The Board shall adopt a list of medical or health conditions for which a person shall be eligible for Pool coverage without applying for health insurance pursuant to subsection (a) of this section. The Board may amend the list as the Board considers appropriate.

(c) Each dependent of an individual who is eligible for Pool coverage shall also be eligible for Pool coverage.

(d) An individual is not eligible for coverage under the Pool if:

(1) The individual has or obtains health insurance coverage substantially similar to or more comprehensive than a Pool policy, or would be eligible to have coverage if the person elected to obtain it, except that:

a. An individual may maintain other coverage for the period of time the individual is satisfying any preexisting condition waiting period under a Pool policy; and

b. An individual may maintain Pool coverage for the period of time the individual is satisfying a preexisting condition waiting period under another health insurance policy intended to replace the Pool policy.

(2) The individual is determined to be eligible for enrollment in the State Medical Assistance Plan.

(3) The individual has previously terminated Pool coverage unless 12 months have lapsed since the termination, except that this subdivision shall not apply with respect to an applicant who is a federally defined eligible individual or to an applicant eligible for or receiving benefits under the Trade Adjustment Assistance Program.

(4) The individual is an inmate or resident of a public institution, except that this subdivision shall not apply with respect to an applicant who is a federally defined eligible individual.

(5) The individual's premiums are paid for or reimbursed under any government-sponsored program or by any government agency or health care provider, except as an otherwise qualifying full-time employee, or dependent thereof, of a government agency or health care provider. This subdivision shall not apply for individuals receiving benefits under the Trade Adjustment Assistance Program or to individuals receiving premium subsidies made available by the State based on individual income levels.

(6) The individual has in effect on the date Pool coverage takes effect health insurance coverage from an insurer or insurance arrangement.

(e) Coverage under the Pool shall cease:

(1) On the date an individual is no longer a resident of this State.
(2) On the date an individual requests coverage to end.
(3) Upon the death of the covered individual.
(4) On the date State law requires cancellation of the Pool policy.
(5) At the option of the Pool, 30 days after the Pool makes any inquiry concerning the individual's eligibility or residence to which the individual does not reply.
(6) Because the individual has failed to make the payments required under this Part.

(f) Except as provided in subsection (e) of this section, an individual who ceases to meet the eligibility requirements of this section may be terminated at the end of the Pool period for which the necessary premiums have been paid.

"**§ 58-50-270. Unfair referral to Pool.**

It is an unfair trade practice under Article 63 of this Chapter for an insurer, insurance producer, as defined in G.S. 58-33-10(7), or third-party administrator to refer an individual employee to the Pool or arrange for an individual employee to apply to the Pool for the purpose of separating that employee from group health insurance coverage provided in connection with the employee's employment, or for the purpose of separating an individual covered by health insurance offered in the individual market.

"**§ 58-50-275. Minimum Pool benefits.**

(a) The Pool shall offer at least two types of health insurance coverage for individuals eligible under G.S. 58-50-265, including preferred provider organizations with different levels of deductibles and cost-sharing, and at least one choice of a health savings account. The covered services and benefit levels may vary between the types of coverage, but at least two types of coverage must, at a minimum, cover the benefits and services outlined in the National Association of Insurance Commissioners' (NAIC) Model Health Pool for Uninsurable Individuals Act and be consistent with comprehensive coverage generally available to persons who are eligible for health insurance other than Medicare. All health insurance products offered by the Pool shall include disease or case management services.

(b) Health insurance products offered by the Pool shall include not less than one million dollars ($1,000,000) lifetime limit and a sliding scale annual limit of two thousand dollars ($2,000) to five thousand dollars ($5,000) on out-of-pocket expenses. The sliding scale shall be based on family income. The Board shall adjust limitations at least once every five years to reflect changes in the medical component of the Consumer Price Index.

"**§ 58-50-280. Preexisting conditions.**

(a) Except as otherwise provided by law, Pool coverage shall exclude charges or expenses incurred during the first 12 months following the effective date of coverage as to any condition for which medical advice, care, or treatment was recommended or received as to such conditions during the 12-month period immediately preceding the effective date of coverage, except that no preexisting condition exclusion shall be applied to a federally defined eligible individual.

(b) Subject to subsection (a) of this section, the preexisting condition exclusions shall be waived to the extent that similar exclusions, if any, have been satisfied under any prior health insurance coverage that was involuntarily terminated, provided that:

(1) Application for Pool coverage is made not later than 63 days following the involuntary termination, and in such case coverage in the Pool shall be effective from the date on which the prior coverage was terminated; and

(2) The applicant is not eligible for continuation or conversion rights that would provide coverage substantially similar to Pool coverage.

"**§ 58-50-285. Nonduplication of benefits.**

(a) The Pool shall be payor of last resort of benefits whenever any other benefit or source of third-party payment is available. Benefits otherwise payable under coverage shall be reduced by all amounts paid or payable through any other health insurance coverage and by all hospital and medical expense benefits paid or payable under any workers' compensation coverage, automobile medical payment, or liability insurance, whether provided on the basis of fault or no-fault, and by any hospital or medical benefits paid or payable under or provided pursuant to any State or federal law or program.

(b) The Pool shall have a cause of action against an eligible person for the recovery of the amount of benefits paid that are not for covered expenses. Benefits due from the Pool may be reduced or refused as a setoff against any amount recoverable under this subsection.

"**§ 58-50-290. Assessments.**

(a) For the purposes of providing the funds necessary to carry out the powers and duties of the Pool, the Board shall assess all insurers at such time and for such amounts as the Board finds necessary. Assessments shall be due in not less than 30 days after prior written notice to the insurers and shall accrue interest at twelve percent (12%) per annum on and after the due date.

(b) Except with respect to special assessments authorized under this section, each insurer shall be assessed in an amount not to exceed two dollars ($2.00) per covered individual insured or reinsured by each insurer per month. The assessment shall be based on actual and expected losses, actuarially appropriate reserves, and administrative expenses in excess of expected and collected premiums and federal loss reimbursements, if any, received by the Pool.

In addition to the assessment, the Board may impose on each insurer a special assessment only when enrollment in the Pool has been capped or suspended. A special assessment may be made to cover only the additional losses of the Pool that are expected to result from the continued entry into the Pool by federally defined eligible individuals during the time that enrollment is closed to all other individuals eligible under G.S. 58-50-265. The special assessment shall be based on actual and expected losses, actuarially appropriate reserves, and administrative expenses in excess of expected and collected premiums for the federally defined eligible individuals who enrolled or are expected to enroll while the suspension of enrollment is in effect.

(b1) Except with respect to special assessments authorized under this section, each insurer shall be assessed an amount not to exceed the following limitations for each covered individual insured per month:

(1) Seventy cents (.70) for the 2007-2008 fiscal year.

(2) One dollar ($1.00) for the 2008-2009 fiscal year.

(3) One dollar thirty cents ($1.30) for the 2009-2010 fiscal year.

(4) One dollar seventy cents ($1.70) for the 2010-2011 fiscal year.

(5) Two dollars ($2.00) for the 2011-2012 fiscal year and all years thereafter."

(c) The Board shall make reasonable efforts designed to ensure that each covered individual is counted only once with respect to any assessment. For that purpose, the Board shall require each insurer that obtains excess or stop-loss insurance to include in its count of covered individuals all individuals whose coverage is insured (including by way of excess or stop-loss coverage) in whole or in part, except that lives covered under the Pool and reinsured or administered by a third-party administrator shall not be included in the count. The Board shall allow a reinsurer to exclude from its number of covered individuals those who have been counted by the primary insurer or by the primary reinsurer or primary excess or stop-loss insurer for the purposes of determining its assessment under this section.

(d) The Board may verify each insurer's assessment based on annual statements and other reports deemed to be necessary by the Board. The Board may use any reasonable method of estimating the number of covered individuals of an insurer if the specific number is unknown.

(e) If assessments and other receipts by the Pool, Board, or administering insurer exceed the actual losses and administrative expenses of the plan, the excess shall be held at interest and used by the Board to offset future losses or to reduce plan premiums. Future losses include reserves for claims incurred but not reported.

(f) The Commissioner may suspend or revoke, after notice and hearing, the license to transact insurance in this State of any insurer that fails to pay an assessment. As an alternative, the Commissioner may levy a forfeiture on any insurer that fails to pay an assessment when due. The forfeiture may not exceed five percent (5%) of the unpaid assessment per month, but no forfeiture shall be less than one hundred dollars ($100.00) per month.

"**§ 58-50-295. Complaint procedures.**

An applicant or participant in coverage from the Pool is entitled to have complaints against the Pool reviewed by a grievance committee appointed by the Board. Members of the Board shall not serve on the grievance committee. The grievance process shall comply with G.S. 58-50-62. The grievance committee shall report to the Board after completion of the review of each complaint. The Board shall retain all written complaints regarding the Pool at least until the third anniversary of the date the Pool received the complaint. An applicant or participant may file for external review of the applicant's grievance after having exhausted the Pool's internal grievance procedure. External review, including eligibility determinations, shall be conducted in accordance with Part 4 of this Article.

"§ 58-50-300. Audit.

An audit of the Pool shall be conducted annually under the oversight of the State Auditor. The cost of the audit shall be reimbursed to the State Auditor from the Special Reserve for the North Carolina Health Insurance Risk Pool.

"§ 58-50-305. Taxation.

The Pool established under this Part is exempt from any and all taxes.

"§ 58-50-310. Rules.

The Executive Director may adopt rules, including temporary rules, to implement this Part. The Executive Director and the Commissioner may adopt rules to carry out their respective powers and duties under this Part.

"§ 58-50-315. Collective action.

The establishment of rates, forms, or procedures, and any other joint or collective action required by this Part may not be the basis of any legal action or criminal or civil liability or penalty against the Pool or any insurer."

SECTION 1.2. On or before January 1, 2007, the Department of Insurance shall notify the Centers for Medicare and Medicaid Services that the State has established the North Carolina Health Insurance Risk Pool and shall request that the North Carolina Health Insurance Risk Pool be approved as an acceptable "alternative mechanism" under the federal Health Insurance Portability and Accountability Act in accordance with 45 C.F.R. § 148.128(e).

SECTION 1.3. The Board of Directors of the North Carolina Health Insurance Risk Pool, as appointed under Section 1.1 of this act, shall monitor methods of financing the Pool to ensure a stable funding source and allow for its continued operation. This monitoring shall include supplementary sources of funding, such as funds obtained from public and private not-for-profit foundations, insurer assessments including special assessments, or other appropriate and available State or non-State funds. The Board shall also review on a regular basis:

(1) The number of individuals in this State who are uninsured as of a date certain because of high-risk conditions.

(2) The number of uninsured individuals who would qualify for coverage under the Pool based on G.S. 58-50-265 and its Plan of Operation.

(3) The cost of coverage under each of the health insurance plans developed by the Board, including administrative costs.

(4) The extent to which assessments meet or exceed amounts necessary for coverage and Board operations.

(5) The status of a request by the State to the Centers for Medicare and Medicaid Services for approval of the North Carolina Health Insurance Risk Pool to be considered an acceptable "alternative mechanism" under the federal Health Insurance Portability and Accountability Act in accordance with 45 C.F.R. § 148.128(e).

The Board shall report its findings and recommendations to the General Assembly on March 1, 2007, and annually thereafter.

SECTION 1.4. The North Carolina Health Insurance Risk Pool Administrator shall study methods for encouraging healthy behaviors and report its

findings to the Board of the Pool and to the General Assembly not later than one year after initial implementation of the Pool.

SECTION 1.5. Notwithstanding G.S. 58-50-280(a), individuals enrolling in the North Carolina Health Insurance Risk Pool within six months of the date that enrollment into the Pool first begins shall be subject to a six-month preexisting condition waiting period.

SECTION 2. There is established in the Teachers' and State Employees' Comprehensive Major Medical Plan the Reserve for the North Carolina Health Insurance Risk Pool ("Reserve"). The sum of one million dollars ($1,000,000) is transferred from the Public Employee Health Benefit Fund ("Fund") to the Reserve for the 2006-2007 fiscal year. These funds may be used to support one additional full-time position to carry out the Executive Director's responsibilities under the North Carolina Health Insurance Risk Pool, and shall be allocated for the reasonable expenses of the Board in conducting its duties under Section 1 of this act that are incurred on or before July 1, 2008. The Reserve is subject to the Executive Budget Act, except that Article 3C of Chapter 143 of the General Statutes does not apply to G.S. 58-50-250(e).

Transfer of the funds from the Fund to the Reserve is contingent upon successful application for and award of federal grant funds to implement the North Carolina Health Insurance Risk Pool. Federal funds received for this purpose shall be deposited to the Reserve. Upon receipt of the federal funds, the Board shall, from Reserve funds, reimburse the Fund in the amount of one million dollars ($1,000,000). It is the intent of the General Assembly that in the event the State is not awarded the federal funds anticipated, the Fund shall be held harmless.

SECTION 3. Section 2 of this act becomes effective July 1, 2006. The remainder of this act is effective when it becomes law. G.S. 58-50-290(b1), as enacted by Section 1.1 of this act, is repealed January 1, 2013. Enrollment in the North Carolina Health Insurance Risk Pool shall commence no later than January 1, 2008.

HOUSE BILL 1895
Committee Substitute Favorable 6/12/06

Short Title: Establish High-Risk Pool. (Public)

Sponsors:

Referred to:

May 11, 2006

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE NORTH CAROLINA HEALTH INSURANCE RISK POOL AND TO APPROPRIATE FUNDS THEREFOR.

The General Assembly of North Carolina enacts:

SECTION 1.1. Article 50 of Chapter 58 of the General Statutes is amended by adding a new Part to read:

"Part 7. North Carolina Health Insurance Risk Pool.

"**§ 58-50-245. Definitions.**

For the purposes of this Part:

(1) "Administrator" means the Pool Administrator selected by the Board in accordance with this Part.

(2) "Benefit plan" means coverage offered by the Pool to eligible individuals.

(3) "Board" means the Board of Directors of the Pool.

(4) "Covered person" means any individual resident of this State, excluding dependents, who is eligible to receive health benefits from any insurer.

(5) "Church plan" has the meaning given that term under section 3(33) of the Employee Retirement Income Security Act of 1974.

(6) "Creditable coverage" has the same meaning as prescribed in G.S. 58-68-30(c)(1).

(7) "Dependent" means a resident spouse or unmarried child under the age of 19 years, a child who is a full-time student under the age of 23 years and who is financially dependent upon the parent, a child who is over 18 years of age and for whom a person may be obligated to pay child support, or a child of any age who is disabled and dependent upon the parent.

(8) "Family member" means a parent, grandparent, brother, sister, or child of a dependent residing with the insured.

(9) "Federally defined eligible individual" has the same meaning as "eligible individual" as prescribed in G.S. 58-68-60(b).

(10) "Governmental plan" has the same meaning as prescribed in G.S. 58-68-60(h)(2).

(11) "Group health plan" means an employee welfare benefit plan as defined in section 3(1) of the Employee Retirement Income Security Act of 1974 to the extent that the plan provides medical care, including items and services paid for as medical care to employees or their dependents, as defined under the terms of the plan directly or through insurance, reimbursement, or otherwise.

(12) "Health insurance coverage" shall have the same meaning as prescribed in G.S. 58-68-25(a)(5). Health insurance coverage does not include benefits described in G.S. 58-68-25(b).

(13) "Insurance arrangement" means a plan, program, contract, or other arrangement through which health care services are provided by an employer to its officers or employees but does not include health care services covered through an insurer.

(14) "Insured" means an individual who is eligible to receive benefits from the Pool. The term "insured" includes dependents and family members, as applicable.

(15) "Insurer" means any entity that provides health insurance coverage in this State. For the purposes of this Part, insurer includes an insurance company, a hospital or medical service corporation, a health maintenance organization, a multiple employer welfare arrangement, a third-party administrator or claims processor, an administrative service organization, or any other nongovernmental entity providing a health benefit plan subject to State insurance regulation.

(16) "Medical care" means amounts paid for:

a. The diagnosis, cure, mitigation, treatment, or prevention of disease, or amounts paid for the purpose of affecting any structure or function of the body;

b. Transportation primarily for and essential to medical care referred to in sub-subdivision a. of this subdivision; and

c. Insurance covering medical care referred to in sub-subdivisions a. and b. of this subdivision.

(17) "Plan of Operation" means the articles, bylaws, and operating rules and procedures adopted by the Board in accordance with this Part.

(18) "Pool" means the North Carolina Health Insurance Risk Pool.

(19) "Resident" means an individual who:

a. Has been legally domiciled in this State for a period of at least 30 days, except that for a federally defined eligible individual, there shall not be a 30-day requirement;

b. Is legally domiciled in this State on the date of application to the Pool and who is eligible for enrollment in the Pool as a

result of the Health Insurance Portability and Accountability Act of 1996; or

c. Is legally domiciled in this State on the date of application to the Pool and is eligible for the credit for health insurance costs under section 35 of the Internal Revenue Code of 1986.

(20) "Significant break in coverage" means a period of 63 consecutive days during all of which the individual does not have any creditable coverage, except that neither a waiting period nor an affiliation period is taken into account in determining a significant break in coverage.

(21) "Trade Adjustment Assistance Program" (TAA) means Title II of the Trade Act of 2002, P.L. 107-210.

"**§ 58-50-250. Risk Pool established; board of directors; plan of operation.**

(a) High-Risk Pool Established. – There is hereby created a nonprofit entity to be known as the North Carolina Health Insurance Risk Pool. The Pool shall operate under the supervision and control of the Board of Directors of the Pool.

(b) Board of Directors Appointment; Membership. – The Board of Directors of the North Carolina Health Insurance Risk Pool shall consist of the Commissioner of Insurance, who shall serve as an ex officio nonvoting member of the Board, and nine members appointed as follows:

(1) Two members of the general public who are not employed by or affiliated with an insurance company or plan, group hospital, or other health care provider, and can reasonably be expected to qualify for coverage in the Pool. Members of the general public include individuals whose only affiliation with health insurance or health care coverage is as a covered member. The two members of the general public shall be appointed as follows:

a. One member upon the recommendation of the President Pro Tempore of the Senate.

b. One member upon the recommendation of the Speaker of the House of Representatives.

(2) Seven members appointed by the Commissioner of Insurance, as follows:

a. Two who are insurers, at least one of whom covers the largest number of persons in the State.

b. One who is licensed to sell health insurance in this State.

c. Two who represent the medical provider community, one as recommended by the North Carolina Medical Society and one as recommended by the North Carolina Hospital Association.

d. One who represents small business, as recommended by the North Carolina Citizens for Business and Industry.

e. One who is either a health policy researcher or a health economist with experience relating to the operation of high-risk insurance pools.

(c) Board of Directors; Terms of Appointment; Vacancies; Compensation. – The initial Board members shall be appointed as follows: three of the members to serve a term of three years; three of the members to serve a term of one year; and three of the members to serve a term of two years. Subsequent Board members shall serve for terms of three years. A Board member's term shall continue until the member's successor is appointed. The Commissioner shall appoint a chair to serve for the initial two years of the Plan's operation. Subsequent chairs shall be elected by a majority vote of the Board members and shall serve for two-year terms. The Commissioner shall fill vacancies in membership and may remove members from the Board for cause. Board members shall not be compensated in their capacity as Board members but shall be reimbursed for reasonable expenses incurred in the necessary performance of their duties.

(d) Plan of Operation. – The Board shall submit to the Commissioner a Plan of Operation for the Pool and any amendments necessary or suitable to assure the fair, reasonable, and equitable administration of the Plan of Operation. The Plan of Operation shall become effective upon approval in writing by the Commissioner consistent with the date on which the coverage under this Part must be made available. If the Board fails to submit a suitable Plan of Operation within 180 days after the appointment of the Board of Directors, or at any time thereafter fails to submit suitable amendments to the Plan of Operation, the Commissioner shall adopt temporary rules necessary or advisable to effectuate the provisions of this section. The rules shall continue in force until modified by the Commissioner or superseded by a Plan of Operation submitted by the Board and approved by the Commissioner. The Plan of Operation shall:

(1) Establish procedures for operation of the Pool.

(2) Establish procedures for selecting a Pool Administrator in accordance with G.S. 58-50-255.

(3) Establish procedures to create a fund for administrative expenses, which shall be managed by the Board.

(4) Establish procedures for the collection, handling, disbursing, accounting, assessing and auditing of assets, monies, and claims of the Pool and the Pool Administrator.

(5) Develop and implement a program to publicize the existence of the Pool, the eligibility requirements, and procedures for enrollment, availability of State premium subsidies, and to maintain public awareness of the Pool.

(6) Establish procedures under which applicants and participants may have grievances reviewed by a grievance committee appointed by the Board in accordance with G.S. 58-50-295.

(7) Establish procedures for identifying and confirming income levels of applicants for Pool coverage who are eligible to receive a State premium subsidy, if a State premium subsidy is available.

(8) Provide for other matters as may be necessary and proper for the execution of the Board's powers, duties, and obligations under this Part.

(e) The Pool shall have the general powers and authority granted under the laws of this State to health insurers and the specific authority to do all of the following:

(1) Enter into contracts as are necessary or proper to carry out the provisions and purposes of this Part, including the authority, with the approval of the Commissioner, to enter into contracts with similar plans of other states for the joint performance of common administrative functions or with persons or other organizations for the performance of administrative functions.

(2) Sue or be sued, including taking any legal actions necessary or proper to recover or collect assessments due the Pool.

(3) Take legal action as necessary to:

a. Avoid the payment of improper claims against the Pool or the coverage provided by or through the Plan.

b. Recover any amounts erroneously or improperly paid by the Plan.

c. Recover any amounts paid by the Pool as a result of mistake of fact or law.

d. Recover other amounts due the Pool.

(4) Establish rates and rate schedules in accordance with this Part.

(5) Issue policies of insurance in accordance with the requirements of this Part.

(6) Appoint appropriate legal, actuarial, and other committees as necessary to provide technical assistance in the operation of the Pool, policy, and other contract design, and any other function within the Pool's authority.

(7) Borrow money to effect the purposes of the Pool. Any notes or other evidence of indebtedness of the Pool not in default are legal investments for insurers and may be carried as admitted assets.

(8) Establish policies, conditions, and procedures for reinsuring risks of participating insurers desiring to issue Pool coverage in their own name. Provision of reinsurance shall not subject the Pool to any of the capital or surplus requirements, if any, otherwise applicable to reinsurers.

(9) Employ and fix the compensation of employees.

(10) Prepare and distribute certificate of eligibility forms and enrollment instruction forms to insurance producers and to the general public.

(11) Provide for reinsurance of risks incurred by the Pool.

(12) Issue additional types of health insurance policies to provide optional coverage, including Medicare supplemental insurance coverage.

(13) Provide for and employ cost containment measures and requirements including preadmission screening, second surgical opinion, concurrent utilization review, disease management, individual case management, and other commonly used benefit plan design features for the purpose

of making health insurance coverage offered by the Pool more cost-effective.

(14) Design, utilize, contract, or otherwise arrange for the delivery of cost-effective health care services, including establishing or contracting with preferred provider organizations, health maintenance organizations, and other limited network provider arrangements.

(15) Adopt bylaws, policies, and procedures as may be necessary or convenient for the implementation of this Part and the operation of the Pool.

(f) The Board shall operate the Pool in a manner so that the estimated cost of providing health insurance coverage during any fiscal year is not anticipated to exceed the total income the Pool expects to receive from policy premiums and other revenue available to the Pool. The Board may impose a cap on enrollment or may suspend enrollment for an indefinite period if the Board finds that estimated costs are anticipated to exceed income.

(g) The Board shall make an annual report to the Commissioner, to the Speaker of the House of Representatives, and to the President Pro Tempore of the Senate. The report shall summarize the activities of the Pool in the preceding calendar year, including the net written and earned premiums, benefit plan enrollment, the expense of administration, and the paid and incurred losses.

(h) Neither the Board nor its employees are liable for any obligations of the Pool. There shall be no liability on the part of and no cause of action of any nature shall arise against the Pool or its agents or employees, the Board, or the Commissioner or his representatives for any action taken by them in good faith in the performance of their powers and duties under this Article. The Board may provide in its bylaws or rules for indemnification of, and legal representation for, its members and employees.

(i) The members of the Board shall comply with the provisions of G.S. 14-234 prohibiting conflicts of interest.

"**§ 58-50-255. Administrator.**

(a) The Board shall select through a competitive bidding process one or more authorized insurers or a third-party administrator to administer the Pool. The Board shall evaluate bids submitted based on criteria established by the Board. The criteria shall allow for the comparison of information about each bidding administrator and selection of a Pool Administrator based on at least the following:

(1) Proven ability to handle health insurance coverage to individuals.

(2) Efficiency and timeliness of the claim processing procedures.

(3) Estimated total charges for administering the Pool.

(4) Ability to apply effective cost containment programs and procedures and to administer the Pool in a cost-efficient manner.

(5) Financial condition and stability.

If a member of the Board has submitted a bid to be selected by the Board as Pool Administrator, that bidding member of the Board shall not participate in the selection process or in the Board's final decision on the selection of the Administrator.

(b) The Administrator shall serve for a period specified in the contract between the Pool and the Administrator subject to removal for cause and subject to any terms, conditions, and limitations of the contract between the Pool and the Administrator. At least one year before the expiration of each period of service by an Administrator, the Board shall invite eligible entities, including the current Administrator, to submit bids to serve as the Administrator. Selection of the Administrator for the succeeding period shall be made at least six months before the end of the current period.

(c) The Administrator shall perform such functions relating to the Pool as may be assigned to it, including:

(1) Determination of eligibility.

(2) Payment of claims.

(3) Establishment of a premium billing procedure for collection of premiums from individuals covered under the Pool.

(4) Other necessary functions to assure timely payment of benefits to covered persons under the Pool.

(d) The Administrator shall submit regular reports to the Board regarding the operation of the Pool. The contract between the Board and the Administrator shall specify the frequency, content, and form of the report.

(e) Following the close of each calendar year, the Administrator shall determine net written and earned premiums, the expense of administration, and the paid and incurred losses for the year and report this information to the Board and the Commissioner on a form prescribed by the Commissioner.

(f) The Administrator shall be paid as provided in the contract between the Board and the Administrator.

"**§ 58-50-260. Risk Pool rates and policy forms.**

(a) The Pool shall adopt and modify, as appropriate, rates, rate schedules, rate adjustments, expense allowances, agents' referral fees, claim reserve formulas, and any other actuarial function appropriate to the operation of the Pool. Rates and rate schedules may be adjusted for appropriate factors such as age, sex, and geographic variation in claim cost and shall take into consideration appropriate rating factors in accordance with established actuarial and underwriting practices.

(b) The Pool shall determine the standard risk rate by considering the premium rates charged by other insurers offering health insurance coverage to individuals. The standard risk rate shall be established using reasonable actuarial techniques and shall reflect anticipated experience and expenses for the coverage. Pool rates shall be one hundred fifty percent (150%) of rates established as applicable for individual standard rates.

(c) The Pool shall provide for premium discounts for covered individuals who are nonsmokers or who are actively participating in a smoking cessation program. Approval of smoking cessation programs, criteria for active participation in smoking cessation programs, and discount rates shall be established by the Board, subject to the approval of the Commissioner.

(d) Provider reimbursement rates under Pool coverage shall be limited to the rates allowed for providers under the Medicare Program.

(e) The Pool shall submit all rates and rate schedules and amendments thereto to the Commissioner for approval, and the Commissioner shall approve the rates and rate schedules before the Pool may use them. The Commissioner, in evaluating the rates and rate schedules, shall consider the factors provided in this section. The Pool shall provide all individuals enrolled in the Pool with at least 45 days notice of any change in Pool rates or rate schedules.

(f) The Pool shall submit all policy forms to the Commissioner for approval, and the Commissioner shall approve the forms before the Pool may use them. Except for any provisions that are specifically treated otherwise under this Part, the provisions of Chapter 58 that apply to benefit plans and policy forms of health insurers generally shall apply to the benefit plans offered and policy forms used by the Pool.

"**§ 58-50-265. Eligibility for Pool coverage.**

(a) Any individual who is and continues to be a resident of this State is eligible for Pool coverage if evidence is provided of:

(1) A notice of rejection or refusal to issue substantially similar health insurance coverage for health reasons by an insurer. A rejection or refusal by an insurer offering only stop-loss, excess loss, or reinsurance coverage with respect to the applicant is not sufficient evidence of eligibility;

(2) An offer to issue health insurance coverage only with a conditional rider that limits coverage for the individual's high-risk medical condition;

(3) A refusal by an insurer to issue health insurance coverage except at a rate exceeding the Pool rate;

(4) A diagnosis of the individual with one of the medical or health conditions listed by the Board in accordance with this section. An individual diagnosed with one or more of these conditions is eligible for Pool coverage without applying for other health insurance coverage;

(5) In the case of a federally defined eligible individual, the individual's maintenance of health insurance coverage, of which the most recent coverage was through an employer-sponsored plan, for the previous 18 months with no gap in coverage greater than 63 days and exhaustion of any available COBRA or State continuation benefits; or

(6) An individual who is legally domiciled in this State and is eligible for the credit for health insurance costs under the Trade Adjustment Assistance Reform Act of 2002, section 35 of the Internal Revenue Code of 1986.

(b) The Board shall adopt a list of medical or health conditions for which a person shall be eligible for Pool coverage without applying for health insurance pursuant to subsection (a) of this section. The Board may amend the list as the Board considers appropriate.

(c) Each dependent of an individual who is eligible for Pool coverage shall also be eligible for Pool coverage.

(d) An individual is not eligible for coverage under the Pool if:

(1) The individual has or obtains health insurance coverage substantially similar to or more comprehensive than a Pool policy, or would be eligible to have coverage if the person elected to obtain it, except that:

a. An individual may maintain other coverage for the period of time the individual is satisfying any preexisting condition waiting period under a Pool policy; and

b. An individual may maintain Pool coverage for the period of time the individual is satisfying a preexisting condition waiting period under another health insurance policy intended to replace the Pool policy.

(2) The individual is determined to be eligible for enrollment in the State Medical Assistance Plan.

(3) The individual has previously terminated Pool coverage unless 12 months have lapsed since the termination, except that this subdivision shall not apply with respect to an applicant who is a federally defined eligible individual or to an applicant eligible for or receiving benefits under the Trade Adjustment Assistance Program.

(4) The individual is an inmate or resident of a public institution, except that this subdivision shall not apply with respect to an applicant who is a federally defined eligible individual.

(5) The individual's premiums are paid for or reimbursed under any government-sponsored program or by any government agency or health care provider, except as an otherwise qualifying full-time employee, or dependent thereof, of a government agency or health care provider. This subdivision shall not apply for individuals receiving benefits under the Trade Adjustment Assistance Program or to individuals receiving premium subsidies made available by the State based on individual income levels.

(6) The individual has in effect on the date Pool coverage takes effect health insurance coverage from an insurer or insurance arrangement.

(e) Coverage under the Pool shall cease:

(1) On the date an individual is no longer a resident of this State.

(2) On the date an individual requests coverage to end.

(3) Upon the death of the covered individual.

(4) On the date State law requires cancellation of the Pool policy.

(5) At the option of the Pool, 30 days after the Pool makes any inquiry concerning the individual's eligibility or residence to which the individual does not reply.

(6) Because the individual has failed to make the payments required under this Part.

(f) Except as provided in subsection (e) of this section, an individual who ceases to meet the eligibility requirements of this section may be terminated at the end of the Pool period for which the necessary premiums have been paid.

"**§ 58-50-270. Unfair referral to Pool.**

It is an unfair trade practice under Article 63 of this Chapter for an insurer, insurance producer, as defined in G.S. 58-33-10(7), or third-party administrator to refer an individual employee to the Pool or arrange for an individual employee to apply to the Pool for the purpose of separating that employee from group health insurance coverage provided in connection with the employee's employment, or for the purpose of separating an individual covered by health insurance offered in the individual market.

"**§ 58-50-275. Minimum Pool benefits.**

(a) The Pool shall offer at least two types of health insurance coverage for individuals eligible under G.S. 58-50-265, including preferred provider organizations with different levels of deductibles and cost-sharing, and at least one choice of a health savings account. The covered services and benefit levels may vary between the types of coverage, but at least two types of coverage must, at a minimum, cover the benefits and services outlined in the National Association of Insurance Commissioners' Model Health Pool for Uninsurable Individuals Act and be consistent with comprehensive coverage generally available to persons who are eligible for health insurance other than Medicare. All health insurance products offered by the Pool shall include disease or case management services.

(b) Health insurance products offered by the Pool shall include not less than one million dollars ($1,000,000) lifetime limit and a sliding scale annual limit of two thousand dollars ($2,000) to five thousand dollars ($5,000) on out-of-pocket expenses. The sliding scale shall be based on family income. The Board shall adjust limitations at least once every five years to reflect changes in the medical component of the Consumer Price Index.

"**§ 58-50-280. Preexisting conditions.**

(a) Except as otherwise provided by law, pool coverage shall exclude charges or expenses incurred during the first 12 months following the effective date of coverage as to any condition for which medical advice, care, or treatment was recommended or received as to such conditions during the 12-month period immediately preceding the effective date of coverage, except that no preexisting condition exclusion shall be applied to a federally defined eligible individual.

(b) Subject to subsection (a) of this section, the preexisting condition exclusions shall be waived to the extent that similar exclusions, if any, have been satisfied under any prior health insurance coverage that was involuntarily terminated, provided that:

(1) Application for Pool coverage is made not later than 63 days following the involuntary termination, and in such case coverage in the Pool shall be effective from the date on which the prior coverage was terminated; and

(2) The applicant is not eligible for continuation or conversion rights that would provide coverage substantially similar to Pool coverage.

"**§ 58-50-285. Nonduplication of benefits.**

(a) The Pool shall be payor of last resort of benefits whenever any other benefit or source of third-party payment is available. Benefits otherwise payable under coverage shall be reduced by all amounts paid or payable through any other health

insurance coverage and by all hospital and medical expense benefits paid or payable under any workers' compensation coverage, automobile medical payment, or liability insurance, whether provided on the basis of fault or no-fault, and by any hospital or medical benefits paid or payable under or provided pursuant to any State or federal law or program.

(b) The Pool shall have a cause of action against an eligible person for the recovery of the amount of benefits paid that are not for covered expenses. Benefits due from the Pool may be reduced or refused as a setoff against any amount recoverable under this subsection.

"**§ 58-50-290. Assessments.**

(a) For the purposes of providing the funds necessary to carry out the powers and duties of the Pool, the Board shall assess all insurers at such time and for such amounts as the Board finds necessary. Assessments shall be due in not less than 30 days after prior written notice to the insurers and shall accrue interest at twelve percent (12%) per annum on and after the due date.

(b) Each insurer shall be assessed in an amount not to exceed two dollars ($2.00) per covered individual insured or reinsured by each insurer per month. The assessment will be based on actual and expected losses, actuarially appropriate reserves, and administrative expenses in excess of expected and collected premiums and federal loss reimbursements, if any, received by the Pool.

(c) The Board shall make reasonable efforts designed to ensure that each covered individual is counted only once with respect to any assessment. For that purpose, the Board shall require each insurer that obtains excess or stop-loss insurance to include in its count of covered individuals all individuals whose coverage is insured (including by way of excess or stop-loss coverage) in whole or in part, except that lives covered under the Pool and reinsured or administered by a third-party administrator shall not be included in the count. The Board shall allow a reinsurer to exclude from its number of covered individuals those who have been counted by the primary insurer or by the primary reinsurer or primary excess or stop-loss insurer for the purposes of determining its assessment under this section.

(d) The Board may verify each insurer's assessment based on annual statements and other reports deemed to be necessary by the Board. The Board may use any reasonable method of estimating the number of covered individuals of an insurer if the specific number is unknown.

(e) If assessments and other receipts by the Pool, Board, or administering insurer exceed the actual losses and administrative expenses of the plan, the excess shall be held at interest and used by the Board to offset future losses or to reduce plan premiums. Future losses include reserves for claims incurred but not reported.

(f) The Commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this State of any insurer that fails to pay an assessment. As an alternative, the Commissioner may levy a forfeiture on any insurer that fails to pay an assessment when due. The forfeiture may not exceed five percent (5%) of the unpaid assessment per month, but no forfeiture shall be less than one hundred dollars ($100.00) per month.

"**§ 58-50-295. Complaint procedures.**

An applicant or participant in coverage from the Pool is entitled to have complaints against the Pool reviewed by a grievance committee appointed by the Board. Members of the Board shall not serve on the grievance committee. The grievance process shall comply with G.S. 58-50-62. The grievance committee shall report to the Board after completion of the review of each complaint. The Board shall retain all written complaints regarding the Pool at least until the third anniversary of the date the Pool received the complaint. An applicant or participant may file for external review of the applicant's grievance after having exhausted the Pool's internal grievance procedure. External review, including eligibility determinations, shall be conducted in accordance with Part 4 of this Article.

"**§ 58-50-300. Audit.**

An audit of the Pool shall be conducted annually under the oversight of the State Auditor. The cost of the audit shall be reimbursed to the State Auditor from the Special Reserve for the North Carolina Health Insurance Risk Pool.

"**§ 58-50-305. Taxation.**

The Pool established under this Part is exempt from any and all taxes.

"**§ 58-50-310. Rules.**

The Commissioner may adopt rules, including temporary rules, to implement this Part.

"**§ 58-50-315. Collective action.**

The establishment of rates, forms, or procedures, and any other joint or collective action required by this Part may not be the basis of any legal action or criminal or civil liability or penalty against the Pool or any insurer."

SECTION 1.2. On or before January 1, 2007, the Department of Insurance shall notify the Centers for Medicare and Medicaid Services that the State has established the North Carolina Health Insurance Risk Pool and shall request that the North Carolina Health Insurance Risk Pool be approved as an acceptable "alternative mechanism" under the federal Health Insurance Portability and Accountability Act in accordance with 45 C.F.R. § 148.128(e).

SECTION 1.3. The Board of Directors of the North Carolina Health Insurance Risk Pool, as appointed under Section 1 of this act, shall monitor methods of financing the Pool to ensure a stable funding source and allow for its continued operation. This monitoring shall include supplementary sources of funding, such as funds obtained from public and private not-for-profit foundations, insurer assessments, or other appropriate and available State or non-State funds. The Board shall also review on a regular basis:

(1) The number of individuals in this State who are uninsured as of a date certain because of high-risk conditions.

(2) The number of uninsured individuals who would qualify for coverage under the Pool based on G.S. 58-50-265 and its Plan of Operation.

(3) The cost of coverage under each of the health insurance plans developed by the Board, including administrative costs.

(4) The extent to which assessments meet or exceed amounts necessary for coverage and Board operations.

(5) The status of a request by the State to the Centers for Medicare and Medicaid Services for approval of the North Carolina Health Insurance Risk Pool to be considered an acceptable "alternative mechanism" under the federal Health Insurance Portability and Accountability Act in accordance with 45 C.F.R. § 148.128(e).

The Board shall report its findings and recommendations to the General Assembly on March 1, 2007, and annually thereafter.

SECTION 1.4. The North Carolina Health Insurance Risk Pool Administrator shall study methods for encouraging healthy behaviors and report its findings to the Board of Directors of the Pool and to the General Assembly not later than one year after initial implementation of the Pool.

SECTION 1.5. The Board of Directors of the Pool shall apply for grant funds available from the federal government to help support the implementation and ongoing costs of operating a high-risk pool. If federal funds are available for purposes for which funds were appropriated in this act from the General Fund, such federal funds shall be used to reimburse the General Fund, to the maximum extent allowable, for amounts appropriated for this purpose.

SECTION 1.6. Notwithstanding G.S. 58-50-280(a), individuals enrolling in the North Carolina Health Insurance Risk Pool within six months of the date that enrollment into the Pool first begins shall be subject to a six-month preexisting condition waiting period.

SECTION 2.1. There is appropriated from the General Fund to the Department of Insurance the sum of seventy-eight thousand nine hundred nineteen dollars ($78,919) for the 2006-2007 fiscal year. These funds shall be used to support one additional full-time position in the Department to carry out the Department's responsibilities under the North Carolina Health Insurance Risk Pool. It is the intent of the General Assembly that funding for this purpose shall become part of the continuation budget of the Department of Insurance.

SECTION 2.2. There is appropriated from the General Fund to the Department of Insurance the sum of one million dollars ($1,000,000) for the 2006-2007 fiscal year. These funds shall be placed in a Special Reserve for the North Carolina Health Insurance Risk Pool in the Department of Insurance and shall be allocated for the reasonable expenses of the Board in conducting its duties under Section 1 of this act that are incurred on or before July 1, 2008. The Special Reserve is subject to the Executive Budget Act, except that Article 3C of Chapter 143 of the General Statutes does not apply to G.S. 58-50-250(e).

SECTION 3. Sections 2.1 and 2.2 of this act become effective July 1, 2006. The remainder of this act is effective when it becomes law. Enrollment in the North Carolina Health Insurance Risk Pool shall commence no later than January 1, 2008.

HOUSE BILL 1895: Establish High-Risk Pool

BILL ANALYSIS

Committee:	House Finance	**Date:**	July 10, 2006
Introduced by:	Reps. Insko, England, Nye, Wright	**Summary by:**	Ben Popkin
Version:	PCS to Second Edition H1895-CSRD		Committee Counsel

SUMMARY: ***House Bill 1895 would establish the North Carolina Health Insurance Risk Pool, the purpose of which would be to enable individuals with high-risk health conditions to obtain health insurance at premium rates that are more affordable than currently available. Pool financing would be achieved through a combination of premiums and assessments with an initial federal grant award to fund Board operating expenses and Pool start-up costs. House Bill 1895 is a recommendation of the House Select Committee on Health Care.***

[As introduced, this bill was identical to S1681, as introduced by Sen. Purcell, which is currently in Senate Appropriations/Base Budget.]

Sections of the act establishing a High Risk Pool Reserve in the State Health Plan would become effective July 1, 2006. The remainder of the act would be effective when it becomes law and enrollment would commence no later than January 1, 2008.

The Proposed Committee Substitute to House Bill 1895 would make the following changes to earlier drafts of this bill: The High Risk Pool is established in the Teachers' and State Employees' Comprehensive Major Medical Plan. Federally defined eligible individuals may continue to enroll in the Pool to fulfill federal grant requirements, if Pool enrollment is otherwise capped or suspended and a special assessment will be implemented to cover their costs. Except with regard to federally defined eligible individuals, an assessment of insurers will be capped through a gradual annual increase. The PCS would also eliminate Board of Directors applying for grant funds by establishing in the State Health Plan the NC Health Insurance Risk Pool. Contingent upon successful application and award of grant funds to implement NC Health Insurance Risk Pool, $1,000,000 would be transferred from the Public Employee Health Benefit Fund to the Reserve to support an additional staff person and other reasonable expenses of the Board.

BILL ANALYSIS:

House Bill 1895 would create a new Part 7 of Article 50 of Chapter 58 of the General Statutes that would create the North Carolina Health Insurance Risk Pool. The Pool would be a nonprofit entity subject to oversight of the Board of Directors of the Pool and administered by one or more insurers or a third-party administrator selected by the Board through a competitive bidding process. The Pool would operate according to a Plan of Operation developed by the Board and approved by the Commissioner of Insurance.

Plan of Operation for the Pool – The act would specify the content of the Board of Directors' Plan of Operation for the Pool and would authorize the Pool to perform all functions necessary to establish and administer the Pool[1]. The Board would be required to submit a Plan of Operation for the Commissioner's approval and to submit an annual report to the Commissioner, to the Speaker of the

[1] Proposed G.S. 58-50-250.

House of Representatives, and to the President Pro Tempore of the Senate regarding earned premiums, plan enrollment, administrative expenses, and losses. The Board would be authorized to cap or suspend enrollment if expenses were anticipated to exceed available funds, except for enrollment by federally defined eligible individuals.

Eligibility and Exclusions[2]:

- An individual who is a resident of the State would be eligible for Pool coverage if evidence is provided of:
  - a notice of rejection from an insurer to provide substantially similar health insurance because of the individual's health;
  - an offer to issue insurance only with a conditional rider limiting coverage of the individual's high-risk condition;
  - refusal by an insurer to issue insurance except at a rate exceeding the Pool rate;
  - a diagnosis of the individual with of one of the medical or health conditions listed by the Board;
  - the individual's maintenance of health insurance coverage under federal criteria without a significant break in coverage and the exhaustion of COBRA or state continuation benefits;
  - the individual's legal domicile in State and eligibility for health insurance costs under the Trade Adjustment Assistance Reform Act of 2002; or
  - the individual's status as a dependent of an individual eligible for Pool coverage.

- An individual would be excluded from Pool coverage if:
  - they have health insurance coverage substantially similar to that offered by Pool (with the exception of coverage during preexisting condition waiting period);
  - they are eligible for enrollment in the State Medical Assistance Plan;
  - they have terminated Pool coverage within the past 12 months;
  - they have reached the lifetime maximum benefit ceiling;
  - they are an inmate or resident of a public institution;
  - they have their premiums paid by a government-sponsored program or government agency or health care provider; or
  - they have health insurance coverage from an insurer or insurance arrangement on the date Pool coverage takes effect.

Pool Administration, Rates and Preexisting Conditions – The Board would select a Pool administrator through a competitive bidding process applying criteria set forth in statute and otherwise established by the Board[3]. The Pool would establish risk rates of 150% of rates established by other health insurers as applicable for individual standard risks[4]. The Pool would offer at least two types of coverage including preferred provider organizations with different deductible levels and cost sharing and at least one choice of a health savings account. At least two types of coverage must, at a minimum, provide benefits outlined in the National Association of Insurance Commissioners' Model Health Plan for Uninsurable Individuals Act and be consistent with comprehensive health insurance coverage generally available[5].

---

[2] Proposed G.S. 58-50-265.
[3] Proposed G.S. 58-50-255.
[4] Proposed G.S. 58-50-260.
[5] Proposed G.S. 58-50-275.

Insurance products offered by the Pool would include a lifetime benefit limit of not less than one million dollars and a sliding scale annual limit on out-of-pocket expenses (from two to five thousand dollars, based on family income) [6]. During the first 12 months of coverage, the Pool would not cover health conditions existing within 12 months prior to coverage (except for federally defined eligible individuals)[7]. For individuals enrolling into the Pool during the first six months that enrollment is made available, the preexisting condition waiting period would be reduced to six months. The Pool would allow for a waiver of exclusion where similar exclusions have been satisfied under another health insurance plan, and coverage lapsed for no more than 63 days and the applicant was ineligible for substantially similar continuation insurance.

Pool Financing, Complaint Procedures and Miscellaneous Provisions – The Board would assess insurers in the amount deemed necessary to fulfill the Board's duties[8]. Each insurer's assessment would be capped annually not exceed $0.70 in 2007-08 per covered individual insured or reinsured by the insurer per month. After successful application and award of grant funds to implement NC Health Insurance Risk Pool, $1,000,000 would be transferred from the Public Employee Health Benefit Fund to the Reserve to support an additional staff person and other reasonable expenses of the Board. A grievance committee appointed by the Board would review complaints against the Pool and report to the Board[9]. The State Auditor would either perform or oversee an annual audit of the Pool[10]. The Pool would be exempt from taxation[11].

BACKGROUND:

In its 2006 Interim Report to the General Assembly, the House Select Committee on Health Care recommended that the General Assembly enact legislation to implement a health insurance high-risk pool to enable individuals with high-risk health conditions to obtain health insurance at premium rates that are more affordable than currently available. Both the Subcommittee on Access and the Subcommittee on Cost of Health Care and Health Insurance for Employees and Employers explored the issue of health insurance high-risk pools in detail. House Bill 1895 is the product of these efforts and was presented as Recommendation 2 of the Subcommittee on Access recommendations to the House Select Committee on Health Care.

The North Carolina Institute of Medicine, Task Force on Covering the Uninsured recently issued a final report addressing a range of issues relating to the uninsured population of this State, including high-risk pools. Recommendation 6.5 calls for the General Assembly to enact legislation to implement a high-risk pool. House Bill 1895 incorporates many of the details put forth in Recommendation 6.5.

Currently, 33 states have established or are establishing high-risk health insurance pools. The Federal Trade Act of 2002 provides a federal grant of up to $1,000,000 to each state establishing new pools. This seed money went to the costs of creating the pool, not the actual financing of it. The act also provided for a matching federal grant of up to 50% of the losses incurred by a state in connection with the operation of the pool. $40,000,000 was appropriated for each fiscal year 2003 and 2004. In 2003, Congress passed legislation extending and providing addition federal funding through 2009.

EFFECTIVE DATE:

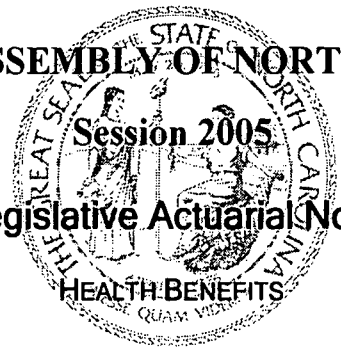
---

[6] Proposed G.S. 58-50-275(b).
[7] Proposed G.S. 58-50-280.
[8] Proposed G.S. 58-50-290.
[9] Proposed G.S. 58-50-295.
[10] Proposed G.S. 58-50-300.
[11] Proposed G.S. 58-50-305.

The act would become effective when it becomes law. Coverage under the North Carolina Health Insurance Risk Pool would only be offered upon passage of an act of the General Assembly establishing *H1895e2-SMRD-CSRD.*

H1895e2-SMRD-CSRD

GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2005

Legislative Actuarial Note

HEALTH BENEFITS

BILL NUMBER: Proposed Committee Substitute H1895-CSRD-49 [v.8]

SHORT TITLE: Establish High-Risk Pool.

SPONSOR(S):

SYSTEM OR PROGRAM AFFECTED: Teachers' and State Employees' Comprehensive Major Medical Plan.

FUNDS AFFECTED: State General Fund, State Highway Fund, other State employer receipts, premium payments for dependents by active and retired teachers and State employees, premium payments for coverages selected by eligible former teachers and State employees, premium payments for coverages selected by firefighters, rescue squad workers, members of the National Guard, certain County local governments, and the North Carolina Symphony Society, Inc.

BILL SUMMARY: The proposed committee substitute modifies the second edition of House Bill 1895 to do the following with respect to the financing and operation of the Teachers' and State Employees' Comprehensive Major Medical Plan (Plan):

1) Designates the Executive Administrator of the Plan as the "Executive Director" of the North Carolina Health Insurance Risk Pool (Pool) [Section 1.1].

2) Includes the Plan under the definition of "Insurer" [Section 1.1].

3) Allows for per member per month assessment fees be applied to insured lives under the Plan and other defined insurers as required by the proposed G.S. 58-50-290. The proposed assessment fees are to be increased on a graduated basis by fiscal year according to the following schedule:
   a. Seventy cents (.70) for the 2007-2008 fiscal year;
   b. One dollar ($1.00) for the 2008-2009 fiscal year;
   c. One dollar thirty cents ($1.30) for the 2009-2010 fiscal year;
   d. One dollar seventy cents ($1.70) for the 2010-2011 fiscal year;
   e. Two dollars ($2.00) for the 2011-2012 fiscal year and all years thereafter [Section 1.1].

4) Allows for the special assessment of fees upon the Plan and other insurers to cover certain federally defined individuals. [Section 1.1]

5) Creates the high-risk pool under the Plan for the purposes of administering the program [Section 1.1]

6) Allows the sum of $1,000,000 to be transferred from the Plan's operating reserves in the Public Employee Health Benefit Fund be transferred to a newly established "North Carolina Health Insurance Risk Pool" [Section 2]

EFFECTIVE DATE: July 1, 2006

ESTIMATED IMPACT ON STATE:

Assessment Fees

By including the Plan under the proposed definition of insurer, the Plan would be subject to the graduated financial assessment fees specified in the proposed legislation. The proposed assessment fee is applied to the Plan on a per member per month basis.

Aon Consulting, the consulting actuary for the Teachers' and State Employees' Comprehensive Major Medical Plan (Plan), estimates the bill will cost the Plan by fiscal year within the ranges stated below:

$2.0 million to $2.7 million in the 2007-2008 fiscal year;
$4.3 million to $7.8 million in the 2008-2009 fiscal year;
$4.7 million to $10.1 million in the 2009-2010 fiscal year;
$5.2 million to $13.3 million in the 2010-2011 fiscal year; and
$5.7 million to $15.6 million in the 2011-2012 fiscal year

Hartman and Associates, consulting actuary for the North Carolina General Assembly, projects a best estimate cost to the Plan by fiscal year of:

$2.3 million in the 2007-2008 fiscal year;
$5.3 million in the 2008-2009 fiscal year;
$6.3 million in the 2009-2010 fiscal year;
$7.6 million in the 2010-2011 fiscal year; and
$9.1 million in the 2011-2012 fiscal year.

Special Assessment Fees

Both the consulting actuary for the Plan, Aon Consulting, and the consulting actuary for the General Assembly, Hartman and Associates, indicate that the provision for special assessment fees may create additional costs to the Plan in excess of the regular assessment fees. Both consulting actuaries noted that it is not possible to estimate the impact of the language authorizing special assessments on the Plan and other defined insurers due to the lack of data available to construct a financial projection.

Transfer of $1 Million in Plan Operating Reserves

Both the consulting actuary for the Plan, Aon Consulting, and the consulting actuary for the General Assembly, Hartman and Associates, indicate that the transfer of Plan operating reserves will not have an adverse impact on the Plan. Their respective conclusions are based on language in the proposed legislation that makes the transfer of Plan reserve funds contingent upon the application and award of Federal funds to which the Executive Director of the Pool must use these funds to reimburse the Plan for any Plan funds expended on behalf of the Pool.

Administration of the High-Risk Pool by the Plan

The Plan's Executive Administrator says that the Plan will not cross-subsidize the operation of the Pool with Plan operating resources without charging and collecting funds from the Pool for services provided by the Plan. Both the consulting actuary for the Plan, Aon Consulting, and the consulting actuary for the General Assembly, Hartman and Associates, indicate that the administrative costs to the Plan will be negligible based on the assumptions and assurances provided by the Plan's Executive Administrator.

ASSUMPTIONS AND METHODOLOGY: The Comprehensive Major Medical Plan for Teachers and State Employees currently operates a self-insured indemnity type health benefit program serving covered employees, retired employees, eligible dependents of employees and retired employees, and eligible former employees and their eligible dependents authorized to continue coverage past a termination of employment other than for retirement or disability purposes. The benefits of the self-insured indemnity type of program are spelled out in Part 3 of Article 3 of Chapter 135 of the North Carolina General Statutes (i.e., $350 annual deductible, 20% coinsurance up to $2,000 annually, etc. paid by the program's members).

The Plan also has statutory authorization under G.S. 135-39.5B(a) to operate optional prepaid programs of health benefit coverage. A prepaid program of coverage by health maintenance organizations (HMOs) was offered in July 1986 under this authority, as an alternative to the Plan's self-insured indemnity program, where HMOs were required to offer benefits that were comparable to those provided by the self-insured indemnity program at that time. Coverage under prepaid HMO plan alternatives ceased being offered after September 30, 2001 due to the lack of HMOs with certificates of authority to transact business in the state responding to solicitations by the Plan to offer them as alternatives.

The 2005 Session of the General Assembly modified the Plan's statutes by adding G.S. 135-39.5(b) to allow the Plan to adopt an arrangement for optional hospital and medical benefits programs other than an option prepaid program on a purchased or underwritten basis including a preferred provider option (PPO) or other type optional program. After consultation with the Committee on Employee Hospital and Medical benefits in early 2006, the Plan has elected to offer benefit alternatives under a PPO option beginning October 1, 2006.

Beginning in July 2000, firefighters, rescue squad workers, and members of the National Guard and their eligible dependents were allowed to voluntarily participate in the Plan on a fully

contributory basis, provided they were ineligible for any other type of group health benefits and had been without such benefits for at least six months.

In July 2004, the North Carolina Symphony Society, Inc., a non-profit corporation, was included as an employing unit under the Plan for the purpose of providing health benefits to the Symphony Society's employees and employees' families. The Symphony Society provides health benefits for its employees and employee family members through a labor contract with the Professional Musicians Association, a local of the American Federation of Musicians. Coverage under the Plan will be on a partially contributory basis for Symphony Society employees and enrolled spouses and dependent children. The amount of contributions provided by the Symphony Society and by their employees is determined periodically in accordance with the labor contract. The Plan's Executive Administrator and Board of Trustees are required to set premium rates for Symphony Society employees and their families separate from those charged to active and retired teachers and state employees and their dependents enrolled in the Plan. Retired employees of the Symphony Society are not eligible for health benefits under the Plan since they are not members of the State Retirement Systems. The North Carolina Symphony, Inc. is authorized to be deemed an employing unit until June 30, 2006.

Also beginning in July 2004, the North Carolina county local governments of Bladen, Cherokee, Rutherford, and Washington counties, and beginning in July 2005 the local government municipality of the Town of Forest City, were authorized to become employing units under the Plan for the purpose of providing health benefits to their respective employees, retired employees, and their employee's eligible spouses and dependent children. If a local government elects to participate in the Plan, they must by legal resolution approved by the Plan elect such participation and agree to make any contributions required by the Plan. A local government must allow all of its eligible employees and their eligible spouses and dependent children to enroll in the Plan on a non-contributory, partially contributory, or fully contributory basis. All enrolled employees, retired employees, and their family members will be required to participate in disease management, case management, and all other cost containment measures implemented by the Plan. If a local government elects to enroll its retired employees, and their eligible spouses and dependent children, the election is irrevocable. Local government employers making this election to cover retired employees are also required to make additional contributions to the Local Governmental Employees' Retirement System for this purpose as do all other employers participating in the Plan that cover its retired employees. If a local government does not participate in the Local Governmental Employees' Retirement System, but has another formally established retirement plan, and elects to cover its retired employees, it is required to make premium contributions to the Plan as it may require. Local governments and their employees and retired employees will pay the same premium rates as those charged by the Plan for active and retired teachers and state employees and their dependents enrolled in the Plan. County local governments authorized to participate in the Plan may do so through June 30, 2006. Of the county local governments authorized to participate in the Plan, only the counties of Bladen, Rutherford, and Washington have chosen to do so as of December 31, 2005.

Employer-paid non-contributory premiums are only authorized for the self-insured indemnity program and the three choices to be offered under the optional preferred provider option program's coverage for teachers, state employees and retired employees. All other types of premium

contributions in the indemnity program and the preferred provider option program are fully contributory, except for job-sharing public school teachers who are authorized to pay partially contributory premiums at 50% of non-contributory rates. The Plan's Executive Administrator has set the premium rates for firefighters, rescue squad workers, and members of the National Guard and their families at 20% more than the comparable rates charged for teachers, state employees, retired employees, and their families. Similarly the Plan's Executive Administrator has set premium rates for members of the North Carolina Symphony Society, Inc. and their families at 51% more than the comparable rates charged for teachers, state employees, retired employees, and their families. Premiums paid by employers to optional programs are limited to like amounts paid to the indemnity program with employees and retired employees paying any optional program premium amounts above the indemnity program's non-contributory rates.

The demographics of the Plan as of December 31, 2005, include:

	Self-Insured Indemnity Program	Optional Programs	Plan Total
Number of Participants			
Active Employees	300,899	-0-	300,899
Active Employee Dependents	132,737	-0-	132,737
Retired Employees	133,486	-0-	133,486
Retired Employee Dependents	19,676	-0-	19,676
Former Employees & Dependents with Continued Coverage	2,482	-0-	2,482
Firefighters, Rescue Squad Workers, National Guard Symphony Members & Dependents	176	-0-	176
Local Government Members & Dependents	1,308	-0-	
Total Enrollments	590,764	-0-	590,764
Number of Contracts			
Employee Only	354,033	-0-	354,033
Employee & Child(ren)	41,686	-0-	41,686
Employee & Family	42,632	-0-	42,632
Total Contracts	438,351	-0-	438,351
Percentage of Enrollment by Age			
29 & Under	25.8%	-0-%	25.8%
30-44	20.4	-0-	20.4
45-54	19.7	-0-	19.7
55-64	18.6	-0-	18.6
65 & Over	15.6	-0-	15.6
Percentage of Enrollment by Sex			

Male	37.5%	-0-%	37.9%
Female	62.5	-0-	62.1

Assumptions for the Self-Insured Indemnity Program: For the fiscal year beginning July 1, 2005, the self-insured program started its operations with a beginning cash balance of $188.1 million. Receipts for the year are estimated to be $1.879 billion from premium collections and $9.6 million from investment earnings for a total of $1.888 billion in receipts for the year. Disbursements from the self-insured program are expected to be $1.740 billion in claim payments and $77.7 million in administration and claims processing expenses for a total of $1.817 billion for the year beginning July 1, 2005. For the fiscal year beginning July 1, 2005, the self-insured indemnity program is expected to have a net operating gain of approximately $70.9 million for the year. The Plan's self-insured indemnity program is expected to have an available beginning cash balance of $259 million for the fiscal year beginning July 1, 2006. The self-insured indemnity program is assumed to be able to carry out its operations for the 2005-2007 biennium without increases in its current premium rates or a reduction in existing benefits or payments to health care providers or both.

This assumption is further predicated upon the fact that the program's cost containment strategies (hospital DRG reimbursements, discounts on hospital outpatient services, pre-admission hospital testing, pre-admission hospital inpatient certification with length-of-stay approval, hospital bill audits, case and disease management for selected medical conditions, mental health case management, coordination of benefits with other payers, Medicare benefit "carve-outs", cost reduction contracts with participating physicians and other providers, a prescription drug benefit manager with manufacturer rebates from formularies, and fraud detection) are maintained and improved where possible.

Current non-contributory premium rates are $244.48 monthly for employees whose primary payer of health benefits is Medicare and $321.14 per month for employees whose primary payer of health benefits is not Medicare. Fully contributory premium amounts for employee and child(ren) contracts are $152.16 monthly for children whose primary payer of health benefits is Medicare and $200.18 monthly for other covered children, and $364.92 month for family contracts whose dependents have Medicare as the primary payer of health benefits and $480.14 per month for other family contract dependents.

Claim cost trends are expected to increase at a rate of 11% annually. Total enrollment in the program is expected to increase less than 2% annually over the next few years. The number of enrolled active employees is expected to increase about 2.5% annually over the next few years, whereas the growth in the number of retired employees is assumed to be 5% per year. The program is expected to have a 1% decrease in the number of active employee dependents per year whereas the number of retiree dependents is expected to increase 1% per year. Investment earnings are based upon a 4.5% return on available cash balances. The self-insured indemnity program maintains a claim stabilization reserve for claim cost fluctuations equal to 7.5% of annual claim payments without reserving additional funds for incurred but unreported claims.

Additional assumptions for the proposed graduated fee amendment to HB 1895:

Data was provided by the North Carolina Institute of Medicine (IOM) in conjunction with Blue Cross Blue Shield of North Carolina (BCBSNC) as to the baseline assumptions for a high-risk pool as proposed in the bill. The amount of projected loss net of premiums paid is an estimated $29.9 million on a current basis assuming medical provider reimbursement at standard Medicare rates. The claims estimates were generated from an analysis by the IOM and BCBSNC based on underwriting experience from insured individuals in higher-risk tiers for a specific individually underwritten insured product offered by the insurer. This loss represents the baseline claims loss projected on a current basis from which the Plan's actuary and the General Assembly's actuary projected future losses for ultimately determining each actuary's projected, though different, assessment rate charges to be paid by the Plan on a per member per month basis. The data also estimated the number of enrollees in the high-risk pool to be 9,000 participants or 1% of the estimated uninsured population. The estimated number of covered insured lives in the State was assumed to be 5 million based on U.S. Census estimates and North Carolina Department of Insurance projections.

Aon Consulting's estimate is based on a projected average enrollment of 651,000 plan members assuming a 10% increase in Plan enrollment as a result of the implementation of a preferred provider option effective October 1, 2006. In addition to normal claims growth trends Aon Consulting also estimates the high-risk pool claims to be 100% to 300% greater than projected by the IOM and BCBSNC.

Hartman and Associates assume a 12% rate growth in the baseline claims provided by the Institute of Medicine and an enrollment growth rate of 2% annually for membership in the Plan for total average membership of 626,000. The analysis by Hartman and Associates does not assume additional claims risk beyond what is projected by the IOM and BCBSNC.

SOURCES OF DATA:

-Actuarial Note, Hartman & Associates, "House Bill 1895 Proposed Committee Substitute..", [Second PCS], July 10, 2006, original of which is on file in the General Assembly's Fiscal Research Division.
-Actuarial Note, Hartman & Associates, House Bill 1895 Proposed Amendment ..., [Graduated Assessment], July 6, 2006, original of which is on file in the General Assembly's Fiscal Research Division.
-Actuarial Note, Hartman & Associates, "House Bill 1895 Second Amendment..", [Special Assessment], July 10, 2006, original of which is on file in the General Assembly's Fiscal Research Division.

-Actuarial Note, Aon Consulting, "House Bill 1895 (Second Version)", [Second PCS], July 10, 2006, original of which is on file with the Comprehensive Major Medical Plan for Teachers and State Employees and the General Assembly's Fiscal Research Division.
-Actuarial Note, Aon Consulting, "Amendment to House Bill 1895 (Second Version)", [Graduated Assessments], July 7, 2006, original of which is on file with the Comprehensive Major Medical Plan for Teachers and State Employees and the General Assembly's Fiscal Research Division.

-Actuarial Note, Aon Consulting, "Second Amendment to House Bill 1895", [Special Assessments], July 10, 2006, original of which is on file with the Comprehensive Major Medical Plan for Teachers and State Employees and the General Assembly's Fiscal Research Division

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Mark Trogdon

APPROVED BY: Lynn Muchmore
Fiscal Research Division

DATE: July 10, 206

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

ATTACHMENT 8

EDITION No. _____

H. B. No. 1895

DATE 7/10/06

S. B. No. _____

Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

(Rep.) Blackwood
(Sen.)

moves to amend the bill on page 3, line 8

( ) WHICH CHANGES THE TITLE

by deleting the word "who:" and substituting the phrase "who is in the country legally and who:".

SIGNED Curtis Blackwood

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

ATTACHMENT 9

EDITION No. _____

H. B. No. 1895 DATE 7/10/06

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

(Rep.) Insko
Sen.)

moves to amend the bill on page 4, line 26

( ) WHICH CHANGES THE TITLE

by deleting the phrase " in writing by the Executive Director" and substituting the phrase "by the majority of the Board"

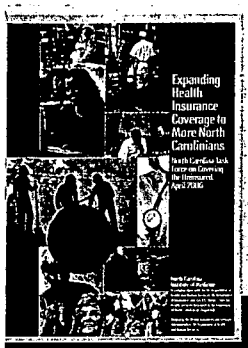
and on page 4, line 33 by deleting the phrase " Board and approved by the Executive Director." and substituting the phrase " word "Board."

SIGNED Verla Insko

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)



Fact Sheet

Expanding Health Insurance Coverage to More North Carolinians

April 2006

Expanding Health Insurance Coverage to People with Pre-existing Health Problems

Individuals who have pre-existing health problems face significant barriers obtaining health insurance coverage in the nongroup market. In employer-sponsored plans, those with pre-existing health problems cannot be excluded from coverage or charged higher premiums. However, the same rules do not apply in the nongroup market.

Many insurance companies refuse to issue policies or limit coverage for people with pre-existing health problems in the nongroup market. For example, a national study conducted for the Kaiser Family Foundation found that 8% of insurers refused to issue a policy to a 24-year-old female with hay fever, and 55% refused to issue a policy to a 55-year-old, overweight, male smoker with high blood pressure.[1]

BlueCross BlueShield of North Carolina (BCBSNC) is the only insurer in the state to offer health insurance in the nongroup market on a guaranteed issue basis. Premiums vary, based on the age, geographic location, and health status of the individual. The premiums are established to cover the anticipated costs of care for people with pre-existing health problems. Since there are no other sources of payments for these individuals with high medical costs, premiums may be as much as seven times the standard rate charged to someone with average health risks. For example, nongroup health insurance coverage for a 35-year-old man with major health problems could cost more than $800/month (for a $1,000 deductible, 30% coinsurance plan), or more than $1,800/month for a 55-year-old man. Coverage for women is generally more expensive, especially if they want maternity coverage. *People with pre-existing health problems are most in need of health insurance to help pay for healthcare services, but the premiums needed to cover the costs of care often make this coverage unaffordable in the nongroup market.*

Thirty-three states have established high-risk pools to help spread the costs of providing insurance to people with significant pre-existing health problems.[2] Research suggests that about 1% of the population have difficulties obtaining insurance due to their health status. This population is often called the "medically uninsurable."[3] Experience from other states with high-risk pools suggest that 10%-30% of these individuals may enroll in a high-risk pool, depending on the premium price and whether the state offers additional subsidies for low-income people.[2]

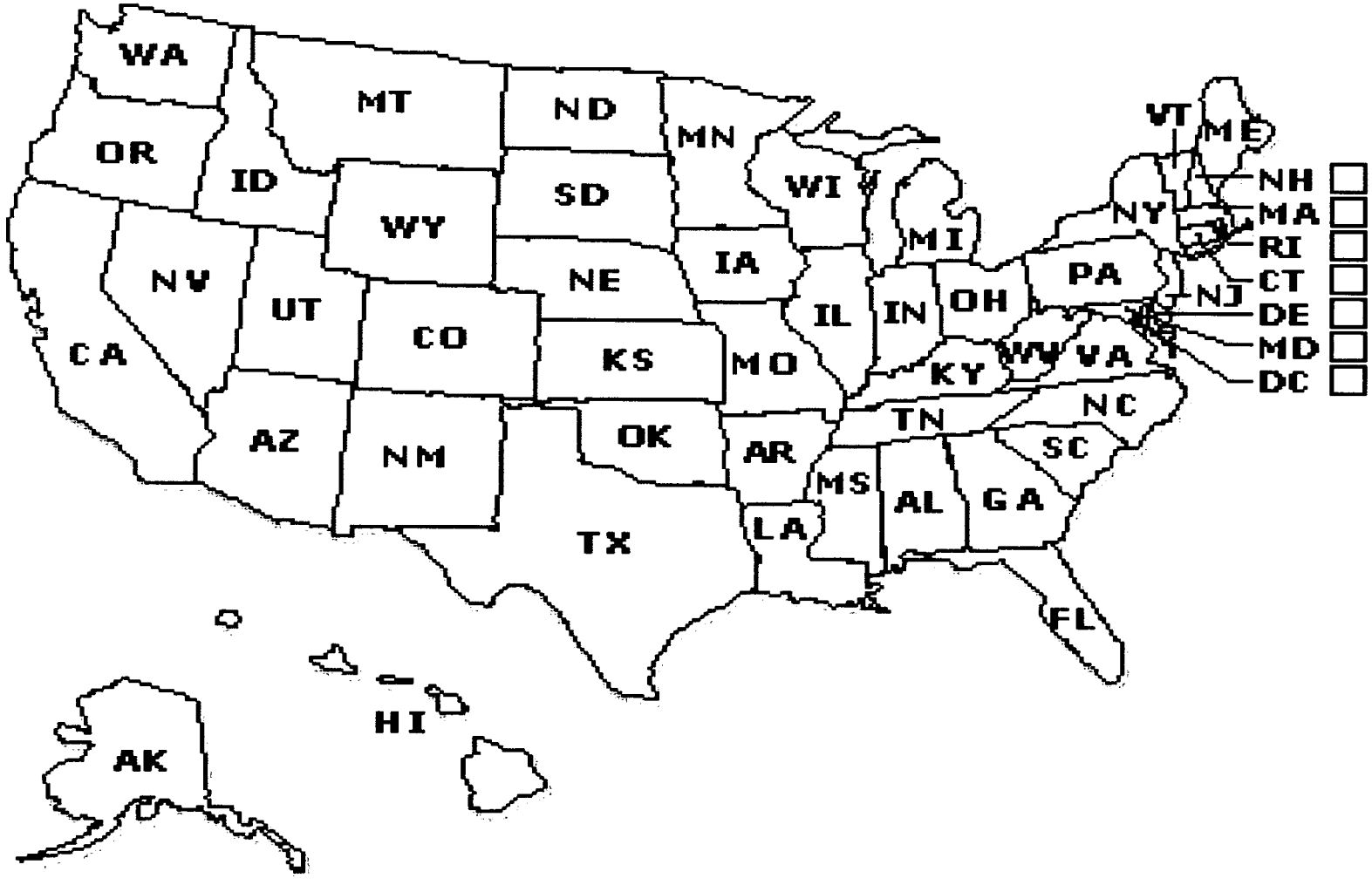
States typically limit the maximum premium charged to medically uninsurable individuals to no more than 150% of the standard rate in order to make it more affordable. Some states provide a further subsidy to help lower-income individuals pay their premiums. The premiums paid do not cover the full cost of the claims incurred in these high-risk pools. Therefore, most states fund the deficits through an assessment on insurance companies, state appropriations, or other means.

The NC Institute of MedicineTask Force on Covering the Uninsured recommended that the NC General Assembly create a high-risk pool that limits premiums to 150% of the standard risk, so that more people with pre-existing health problems can afford coverage. Losses should be covered through an assessment on insurers, including traditional insurance companies, Health Maintenance Organizations (HMOs), Multiple Employer Welfare Arrangements (MEWAs), third party administrators, and stop-loss and reinsurance carriers.[4,2] Providers would be paid using Medicare payment rates, which are less than what is typically offered through commercial insurance. The General Assembly should also help subsidize premium costs for lower-income individuals.[5]

Federal funding is available to help defray some of the costs of the high-risk pool. Congress appropriated funds to provide start-up grants of up to $1 million for states that have not yet established a high-risk pool. In addition, Congress appropriated $75 million/year through 2010 to help offset some of the ongoing operational costs of state high-risk pools: 40% of the money will be distributed equally among states that operate high-risk pools, 30% based on the numbers of uninsured in the state, and 30% based on the number of participants in the state's high-risk pool.

State High-Risk Health Insurance Pools as of December 31, 2004

Source: www.statehealthfacts.org



☐ Yes

☐ No

☐ No data available (Tennessee's Tenncare program serves uninsurable individuals as well as Medicaid and uninsured populations)

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☒Committee Substitute for

HB 1895 A BILL TO BE ENTITLED AN ACT TO ESTABLISH THE NORTH CAROLINA HEALTH INSURANCE RISK POOL AND TO APPROPRIATE FUNDS THEREFOR.

☒ With a favorable report as to Committee Substitute Bill 2, unfavorable as to Committee Substitute Bill 1.

(FOR JOURNAL USE ONLY)

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

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

North Carolina General Assembly

House Committee on Finance

Minutes

~

July 11, 2006

The House Committee on Finance met on Tuesday, July 11, 2006 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Alexander, Gibson, Luebke, McComas, and Wainwright; Vice-Chairs Daughtridge, Hill, Ross, Weiss, and Womble; and Representatives B. Allen, Blackwood, Bordsen, Capps, Carney, Dockham, Faison, Fisher, Folwell, Glazier, Hackney, Harrell, Holliman, Insko, Lewis, Lucas, McGee, Rayfield, Underhill, Vinson, Walend, and Wiley. Ex-Officio member present was Representative Cunningham. Also present were Sergeant-at-Arms Nell Casper, Will Heath, Fred Hines, Marvin Lee, and Dusty Rhodes. Staff persons present included Cindy Avrette, Rodney Bizzell, Gerry Cohen, David Crotts, Brenna Erford, Dan Ettefagh, Canaan Huie and Martha Walston. The Agenda and Visitor Registration Sheets are attached and incorporated into these minutes as **attachments 1 and 2**.

Chairman Luebke called the meeting to order at 8:35 am and recognized the ten (10) pages present: (1) Lesley Pearce of Person County, sponsored by Representative Wilkins; (2) Blair James of Mecklenburg County, sponsored by Representative Gulley; (3) Sarah Flowers of Nash County, sponsored by Representative Fisher; (4) Erin Woodlief of Nash County, sponsored by Representative Fisher; (5) Connolly Walker of Carteret County, sponsored by Speaker Black; (6) Johnsie Bauguess of Alamance County, sponsored by Representative Allred; (7) Laura Reinhard of Wake County, sponsored by Speaker Black; (8) William Dunlow of Halifax County, sponsored by Representative Wray; (9) Cody Hall of Stokes County, sponsored by Representative Holloway; and (10) Michael Carpenter of Halifax County, sponsored by Speaker Black.

The first bill under consideration by the Committee was **SB 2010 – AIRCRAFT MECHANICS' LIEN** (see **attachment 3**). Chairman Luebke recognized Representative Hill who moved for the adoption of the proposed committee substitute for the Committee's consideration. The motion carried. Senator Hagan was then recognized and explained that this bill would create a process for filing and enforcing statutory liens for unpaid labor or materials on an aircraft and for unpaid storage of an aircraft. Cindy Avrette of Research was then recognized and discussed the winemaking portion of the bill. She stated that the PCS adds the provisions of House Bill 1025 that would create a winemaking-on-premises permit to businesses where customers may purchase ingredients and rent the equipment, time, and space to make unfortified wine for personal use. Following the explanation, Representative Hackney asked how this bill is eligible for consideration in the short session. Cindy Avrette explained that this bill authorizes the clerk of court to collect fees for filing, copying, and certifying the aircraft liens. Representative Alexander moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill.

Seeing no further discussion, Chairman Luebke called the motion to a vote and it carried without objection.

The next bill considered by the Committee was **SB 402 – WATER/UTILITIES SAVINGS IN GOVT. FACILITIES** (see **attachment 4**). Chairman Luebke first recognized Representative Tolson to explain the bill. Representative Tolson stated that the bill expands the use of installment finance contracts for guaranteed energy savings projects. This bill also increases from $50 million to $100 million the amount of installment finance contracts the State may enter to finance guaranteed energy savings measures. The bill also includes water and other utility savings to the types of energy savings upon which a guaranteed savings energy contract may be issued. Representative Womble was recognized and asked if the water provision is a requirement in the bill or a suggestion. In response, Cindy Avrette of Research said that governments would have to implement the water-related cost savings in order to finance energy savings measures. Representative Weiss was then recognized and moved that Senate Bill 402 be given a favorable report by the Committee. As there was no further debate, Chairman Luebke called the motion to a vote and it carried by consent.

Chairman Luebke then recognized Senator Malone to explain **SB 2009 – PUBLIC-PRIVATE PARTNERSHIPS FOR SCHOOLS** (see **attachment 5**). Senator Malone stated that this bill allows for capital leases of school facilities. He also reported that the bill gives up no rights or responsibilities to the local boards of education. Following the explanation, Representative Weiss commented that many counties are struggling to keep up with rapid growth and this bill would give counties an additional option. Chairman Luebke then recognized Representative Womble who asked how this bill promotes minority business participation. Canaan Huie stated that private developers would be required to seek competition and minority business participation in connection with the construction work. The private developer would be required to adopt the minority business participation goals of the local board of education.

Chairman Luebke then recognized Representative Carney who expressed her support for the bill. Following her comments, Representative Blackwood was recognized and asked who would own the building if it was leased to the local government. In response, Canaan Huie stated that the nature of this bill provides that private entities could own the land and/or the building. Representative Blackwood then asked how this bill is beneficial to local schools. Canaan Huie was then recognized again and stated that a capital lease would be cheaper in the first year then it would be to pay for the entire construction cost. A private company would also likely be able to complete construction at a lower cost than a government entity. Representative Ross was then recognized and stated that other states have similar legislation that has worked well. She then moved that Senate Bill 2009 be given a favorable report by the Committee. Seeing no further discussion, Chairman Luebke called the motion to a vote and it carried without objection.

The following bill considered by the Committee was **SB 1666 – SUNSET BEACH/SEWAGE COLLECTION SYSTEM** (see **attachment 6**). Representative Hill was first recognized to explain the bill. He stated that this is a local bill that authorizes the Town of Sunset Beach to levy special assessments for sewage collection and treatment facilities. He also reported that the bill was given a favorable report by the Senate State and Local Government Committee, as well as, the House Local Government I Committee. Representative Wainwright was then recognized and moved that Senate Bill 1666 be given a favorable report. As there was no further debate, Chairman Luebke called the motion to a vote and it carried by consent.

The next bill under consideration by the Committee was **SB 948 – AMEND BOATING SAFETY/VESSEL TITLING LAW** (see **attachment 7**). Representative Harrell was recognized

and explained that the bill increases the fee for a transfer of certificate of title from $10 to $20. The bill also makes other various changes related to boating safety and vessel titling laws. Following the explanation, Representative Wainwright moved that Senate bill 948 be given a favorable report by the Committee. Seeing no further discussion, Chairman Luebke called the motion to a vote and it carried without objection.

Chairman Luebke then recognized Representative Walend to explain **SB 1804 – TRYON/BOILING SPRINGS OCCUPANCY TAX** (see **attachment 8**). She stated that this bill authorizes the Towns of Tryon and Boiling Springs to levy a 3% room occupancy tax. Representative Walend also said that the bill had received no opposition and conforms to the guidelines as set by the Subcommittee on Occupancy Tax. Chairman Luebke then recognized Representative Womble who stated that this bill received a favorable report from the House Finance Subcommittee on Occupancy Tax. He then moved that Senate Bill 1804 be given a favorable report by the Committee. As there was no further debate, Chairman Luebke called the motion to a vote and it carried by consent.

The following bill considered by the Committee was **SB 2043 – INCREASE MORTGAGE LENDING FEES** (see **attachment 9**). Chairman Luebke first recognized Representative Glazier to explain the bill. Representative Glazier reported that this bill would increase the cap on fees charged to mortgage brokers and loan officers by the Banking Commission. The bill also authorizes the Commissioner of Banks to participate in a centralized national licensing system and database funded and administered by state mortgage regulators. Representative Glazier noted that the bill was requested by the Commissioner of Banks and that the fees raised in the bill will not affect the consumer. Following the explanation, Representative Wainwright moved that Senate bill 2043 be given a favorable report by the Committee. Seeing no further discussion, Chairman Luebke called the motion to a vote and it carried without objection.

The next bill considered by the Committee was **HB 1963 – REVENUE LAWS TECH. & MOTOR FUEL TAX CHANGES** (see **attachment 10**). Since Representative Luebke was the primary sponsor on the bill, Representative Wainwright assumed the position as Chairman of the Committee. Chairman Wainwright first recognized Representative Luebke to explain the bill. Representative Luebke stated that this bill is here before the Committee for concurrence because of a material change added by the Senate Finance Committee. This provision located on page 20, section 30, gives authority to Mecklenburg County to impose a rental car tax and use the revenue to supplant and replace existing general fund revenues allocated to public transportation. Representative Alexander was then recognized and distributed a handout that details how the general fund revenues made available by the new Mecklenburg County rental car tax would be used. The handout gave an overview of a project in downtown Charlotte that involves a 46-story office tower, a 250-unit residential condominium complex, and various cultural facilities. Chairman Wainwright then recognized Representative Holliman who asked if the rental car tax would now be going for non-transportation needs. In response, Ron Kimball, Assistant City Manager from Charlotte, stated that this bill would allow the revenue from the car rental tax to supplant existing general fund revenues allocated to public transportation. Gerry Cohen of Bill Drafting was recognized and affirmed the previous assertions that this bill would allow Charlotte to spend the rental car tax on non-transportation needs.

Patsy Kinsey from the Charlotte City Council was recognized by the Chair and expressed her support for the bill. She also stated that this bill had the support of each of the municipalities in Mecklenburg County and their respective Chambers of Commerce. Chairman Wainwright then recognized Bob Bertges from the Wachovia Corporation who gave an overview of the public-private partnership. He stated that Wachovia was prepated to invest some $800 million toward the

project, without the request for incentives from the State. He also said that 20% of the appropriations for the project would be given toward women and minority businesses. Jim Phillips who represents Hertz and Avis Car Rental Companies was recognized next to speak. He spoke in opposition to the bill. He stated that transit money is historically locked away exclusively for transit funding and this bill is moving against that precedent. Representative Alexander was then recognized and moved that the Committee recommend that the House do concur with the Senate changes to the bill. Representative Fisher expressed her regret that this special provision was brought to the House in this way. As there was no further debate, Chairman Wainwright then called the motion to a vote and it carried by majority.

Chairman Luebke then reassumed the Chair of the Committee and announced that **SB 2011 – RAILROAD CARS SALES TAX CHANGES** was removed from the Committee's calendar.

Without objection, **SB 1431 – BURGAW OCCUPANCY TAX** (see **attachment 11**) was then placed on the Committee calendar for immediate consideration. Chairman Luebke recognized Representative Hill who moved for the adoption of the proposed committee substitute (PCS) for the Committee's consideration. The motion carried. Representative Wright was then recognized and explained the bill. He first reported that the Occupancy Tax Subcommittee had given this PCS a report without prejudice. Trina Griffin of Research explained the details of the New Hanover portion of the bill. She stated that the bill creates a new taxing district and modifies the distribution formula of the Wilmington and New Hanover County occupancy taxes. Representative Glazier was recognized and asked what the concerns were on the bill that led the Occupancy Tax Subcommittee to giving a report without prejudice. Trina Griffin explained that the occupancy tax guidelines state that two-thirds of occupancy tax revenue should be used for promotion and the remainder being used for tourism-related expenses. This bill does not follow these guidelines.

Tom Pollard, city attorney for City of Wilmington, was then recognized and stated that the City of Wilmington approved of the language of the current version of the bill. Jim Hobbs, director of the Hospitality Alliance in Raleigh, was then recognized and stated that he is not allowed to speak for or against the bill because of pending litigation regarding the Wilmington Convention Center. Representative Alexander was then recognized and stated that she does not feel comfortable with moving on a bill that involves substance currently in litigation. Chairman Luebke then recognized Representative Wright who stated that both parties involved in the litigation has added input on this bill. As the time allotted for the Committee had then expired, Chairman Luebke then adjourned the meeting at 10:01 am.

Respectfully submitted,

Representative Paul Luebke
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:

1. Agenda
2. Visitor Registration Sheets
3. Senate Bill 2010 (and related materials)
4. Senate Bill 402 (and related materials)
5. Senate Bill 2009 (and related materials)

6. Senate Bill 1666 (and related materials)
7. Senate Bill 948 (and related materials)
8. Senate Bill 1804 (and related materials)
9. Senate Bill 2043 (and related materials)
10. House Bill 1963 (and related materials)
11. Senate Bill 1431 (and related materials)
12. Senate Bill 2011 (and related materials) – (REMOVED FROM CALENDAR)

North Carolina General Assembly

House Committee on Finance

Minutes

~

July 11, 2006

The House Committee on Finance met on Tuesday, July 11, 2006 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Alexander, Gibson, Luebke, McComas, and Wainwright; Vice-Chairs Daughtridge, Hill, Ross, Weiss, and Womble; and Representatives B. Allen, Blackwood, Bordsen, Capps, Carney, Dockham, Faison, Fisher, Folwell, Glazier, Hackney, Harrell, Holliman, Insko, Lewis, Lucas, McGee, Rayfield, Underhill, Vinson, Walend, and Wiley. Ex-Officio member present was Representative Cunningham. Also present were Sergeant-at-Arms Nell Casper, Will Heath, Fred Hines, Marvin Lee, and Dusty Rhodes. Staff persons present included Cindy Avrette, Rodney Bizzell, Gerry Cohen, David Crotts, Brenna Erford, Dan Ettefagh, Canaan Huie and Martha Walston. The Agenda and Visitor Registration Sheets are attached and incorporated into these minutes as **attachments 1 and 2.**

Chairman Luebke called the meeting to order at 8:35 am and recognized the ten (10) pages present: (1) Lesley Pearce of Person County, sponsored by Representative Wilkins; (2) Blair James of Mecklenburg County, sponsored by Representative Gulley; (3) Sarah Flowers of Nash County, sponsored by Representative Fisher; (4) Erin Woodlief of Nash County, sponsored by Representative Fisher; (5) Connolly Walker of Carteret County, sponsored by Speaker Black; (6) Johnsie Bauguess of Alamance County, sponsored by Representative Allred; (7) Laura Reinhard of Wake County, sponsored by Speaker Black; (8) William Dunlow of Halifax County, sponsored by Representative Wray; (9) Cody Hall of Stokes County, sponsored by Representative Holloway; and (10) Michael Carpenter of Halifax County, sponsored by Speaker Black.

The first bill under consideration by the Committee was **SB 2010 – AIRCRAFT MECHANICS' LIEN** (see **attachment 3**). Chairman Luebke recognized Representative Hill who moved for the adoption of the proposed committee substitute for the Committee's consideration. The motion carried. Senator Hagan was then recognized and explained that this bill would create a process for filing and enforcing statutory liens for unpaid labor or materials on an aircraft and for unpaid storage of an aircraft. Cindy Avrette of Research was then recognized and discussed the winemaking portion of the bill. She stated that the PCS adds the provisions of House Bill 1025 that would create a winemaking-on-premises permit to businesses where customers may purchase ingredients and rent the equipment, time, and space to make unfortified wine for personal use. Following the explanation, Representative Hackney asked how this bill is eligible for consideration in the short session. Cindy Avrette explained that this bill authorizes the clerk of court to collect fees for filing, copying, and certifying the aircraft liens. Representative Alexander moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill.

Seeing no further discussion, Chairman Luebke called the motion to a vote and it carried without objection.

The next bill considered by the Committee was **SB 402 – WATER/UTILITIES SAVINGS IN GOVT. FACILITIES** (see **attachment 4**). Chairman Luebke first recognized Representative Tolson to explain the bill. Representative Tolson stated that the bill expands the use of installment finance contracts for guaranteed energy savings projects. This bill also increases from $50 million to $100 million the amount of installment finance contracts the State may enter to finance guaranteed energy savings measures. The bill also includes water and other utility savings to the types of energy savings upon which a guaranteed savings energy contract may be issued. Representative Womble was recognized and asked if the water provision is a requirement in the bill or a suggestion. In response, Cindy Avrette of Research said that governments would have to implement the water-related cost savings in order to finance energy savings measures. Representative Weiss was then recognized and moved that Senate Bill 402 be given a favorable report by the Committee. As there was no further debate, Chairman Luebke called the motion to a vote and it carried by consent.

Chairman Luebke then recognized Senator Malone to explain **SB 2009 – PUBLIC-PRIVATE PARTNERSHIPS FOR SCHOOLS** (see **attachment 5**). Senator Malone stated that this bill allows for capital leases of school facilities. He also reported that the bill gives up no rights or responsibilities to the local boards of education. Following the explanation, Representative Weiss commented that many counties are struggling to keep up with rapid growth and this bill would give counties an additional option. Chairman Luebke then recognized Representative Womble who asked how this bill promotes minority business participation. Canaan Huie stated that private developers would be required to seek competition and minority business participation in connection with the construction work. The private developer would be required to adopt the minority business participation goals of the local board of education.

Chairman Luebke then recognized Representative Carney who expressed her support for the bill. Following her comments, Representative Blackwood was recognized and asked who would own the building if it was leased to the local government. In response, Canaan Huie stated that the nature of this bill provides that private entities could own the land and/or the building. Representative Blackwood then asked how this bill is beneficial to local schools. Canaan Huie was then recognized again and stated that a capital lease would be cheaper in the first year then it would be to pay for the entire construction cost. A private company would also likely be able to complete construction at a lower cost than a government entity. Representative Ross was then recognized and stated that other states have similar legislation that has worked well. She then moved that Senate Bill 2009 be given a favorable report by the Committee. Seeing no further discussion, Chairman Luebke called the motion to a vote and it carried without objection.

The following bill considered by the Committee was **SB 1666 – SUNSET BEACH/SEWAGE COLLECTION SYSTEM** (see **attachment 6**). Representative Hill was first recognized to explain the bill. He stated that this is a local bill that authorizes the Town of Sunset Beach to levy special assessments for sewage collection and treatment facilities. He also reported that the bill was given a favorable report by the Senate State and Local Government Committee, as well as, the House Local Government I Committee. Representative Wainwright was then recognized and moved that Senate Bill 1666 be given a favorable report. As there was no further debate, Chairman Luebke called the motion to a vote and it carried by consent.

The next bill under consideration by the Committee was **SB 948 – AMEND BOATING SAFETY/VESSEL TITLING LAW** (see **attachment 7**). Representative Harrell was recognized

and explained that the bill increases the fee for a transfer of certificate of title from $10 to $20. The bill also makes other various changes related to boating safety and vessel titling laws. Following the explanation, Representative Wainwright moved that Senate bill 948 be given a favorable report by the Committee. Seeing no further discussion, Chairman Luebke called the motion to a vote and it carried without objection.

Chairman Luebke then recognized Representative Walend to explain **SB 1804 – TRYON/BOILING SPRINGS OCCUPANCY TAX** (see **attachment 8**). She stated that this bill authorizes the Towns of Tryon and Boiling Springs to levy a 3% room occupancy tax. Representative Walend also said that the bill had received no opposition and conforms to the guidelines as set by the Subcommittee on Occupancy Tax. Chairman Luebke then recognized Representative Womble who stated that this bill received a favorable report from the House Finance Subcommittee on Occupancy Tax. He then moved that Senate Bill 1804 be given a favorable report by the Committee. As there was no further debate, Chairman Luebke called the motion to a vote and it carried by consent.

The following bill considered by the Committee was **SB 2043 – INCREASE MORTGAGE LENDING FEES** (see **attachment 9**). Chairman Luebke first recognized Representative Glazier to explain the bill. Representative Glazier reported that this bill would increase the cap on fees charged to mortgage brokers and loan officers by the Banking Commission. The bill also authorizes the Commissioner of Banks to participate in a centralized national licensing system and database funded and administered by state mortgage regulators. Representative Glazier noted that the bill was requested by the Commissioner of Banks and that the fees raised in the bill will not affect the consumer. Following the explanation, Representative Wainwright moved that Senate bill 2043 be given a favorable report by the Committee. Seeing no further discussion, Chairman Luebke called the motion to a vote and it carried without objection.

The next bill considered by the Committee was **HB 1963 – REVENUE LAWS TECH. & MOTOR FUEL TAX CHANGES** (see **attachment 10**). Since Representative Luebke was the primary sponsor on the bill, Representative Wainwright assumed the position as Chairman of the Committee. Chairman Wainwright first recognized Representative Luebke to explain the bill. Representative Luebke stated that this bill is here before the Committee for concurrence because of a material change added by the Senate Finance Committee. This provision located on page 20, section 30, gives authority to Mecklenburg County to impose a rental car tax and use the revenue to supplant and replace existing general fund revenues allocated to public transportation. Representative Alexander was then recognized and distributed a handout that details how the general fund revenues made available by the new Mecklenburg County rental car tax would be used. The handout gave an overview of a project in downtown Charlotte that involves a 46-story office tower, a 250-unit residential condominium complex, and various cultural facilities. Chairman Wainwright then recognized Representative Holliman who asked if the rental car tax would now be going for non-transportation needs. In response, Ron Kimball, Assistant City Manager from Charlotte, stated that this bill would allow the revenue from the car rental tax to supplant existing general fund revenues allocated to public transportation. Gerry Cohen of Bill Drafting was recognized and affirmed the previous assertions that this bill would allow Charlotte to spend the rental car tax on non-transportation needs.

Patsy Kinsey from the Charlotte City Council was recognized by the Chair and expressed her support for the bill. She also stated that this bill had the support of each of the municipalities in Mecklenburg County and their respective Chambers of Commerce. Chairman Wainwright then recognized Bob Bertges from the Wachovia Corporation who gave an overview of the public-private partnership. He stated that Wachovia was prepated to invest some $800 million toward the

project, without the request for incentives from the State. He also said that 20% of the appropriations for the project would be given toward women and minority businesses. Jim Phillips who represents Hertz and Avis Car Rental Companies was recognized next to speak. He spoke in opposition to the bill. He stated that transit money is historically locked away exclusively for transit funding and this bill is moving against that precedent. Representative Alexander was then recognized and moved that the Committee recommend that the House do concur with the Senate changes to the bill. Representative Fisher expressed her regret that this special provision was brought to the House in this way. As there was no further debate, Chairman Wainwright then called the motion to a vote and it carried by majority.

Chairman Luebke then reassumed the Chair of the Committee and announced that **SB 2011 – RAILROAD CARS SALES TAX CHANGES** was removed from the Committee's calendar.

Without objection, **SB 1431 – BURGAW OCCUPANCY TAX** (see **attachment 11**) was then placed on the Committee calendar for immediate consideration. Chairman Luebke recognized Representative Hill who moved for the adoption of the proposed committee substitute (PCS) for the Committee's consideration. The motion carried. Representative Wright was then recognized and explained the bill. He first reported that the Occupancy Tax Subcommittee had given this PCS a report without prejudice. Trina Griffin of Research explained the details of the New Hanover portion of the bill. She stated that the bill creates a new taxing district and modifies the distribution formula of the Wilmington and New Hanover County occupancy taxes. Representative Glazier was recognized and asked what the concerns were on the bill that led the Occupancy Tax Subcommittee to giving a report without prejudice. Trina Griffin explained that the occupancy tax guidelines state that two-thirds of occupancy tax revenue should be used for promotion and the remainder being used for tourism-related expenses. This bill does not follow these guidelines.

Tom Pollard, city attorney for City of Wilmington, was then recognized and stated that the City of Wilmington approved of the language of the current version of the bill. Jim Hobbs, director of the Hospitality Alliance in Raleigh, was then recognized and stated that he is not allowed to speak for or against the bill because of pending litigation regarding the Wilmington Convention Center. Representative Alexander was then recognized and stated that she does not feel comfortable with moving on a bill that involves substance currently in litigation. Chairman Luebke then recognized Representative Wright who stated that both parties involved in the litigation has added input on this bill. As the time allotted for the Committee had then expired, Chairman Luebke then adjourned the meeting at 10:01 am.

Respectfully submitted,

Representative Paul Luebke
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:

1. Agenda
2. Visitor Registration Sheets
3. Senate Bill 2010 (and related materials)
4. Senate Bill 402 (and related materials)
5. Senate Bill 2009 (and related materials)

6. Senate Bill 1666 (and related materials)
7. Senate Bill 948 (and related materials)
8. Senate Bill 1804 (and related materials)
9. Senate Bill 2043 (and related materials)
10. House Bill 1963 (and related materials)
11. Senate Bill 1431 (and related materials)
12. Senate Bill 2011 (and related materials) – (REMOVED FROM CALENDAR)

AGENDA

ATTACHMENT 1

House Finance Committee

Tuesday, July 11, 2006
8:30 a.m.
Room 544 LOB
Chaired by: Rep. Luebke

Co-Chairs

Representative Martha Alexander
Representative Pryor Gibson
Representative Julia Howard

Representative Paul Luebke
Representative Danny McComas
Representative William Wainwright

Call to Order

Introduction of Pages

Bills:

HB 1963	**REVENUE LAWS TECH. & MOTOR FUEL TAX CHANGES (FOR CONCURRENCE)**	*Rep. Luebke*
SB 402	**WATER/UTILITIES SAVINGS IN GOVT. FACILITIES**	*Sen. Kinnaird*
SB 948	**AMEND BOATING SAFETY/VESSEL TITLING LAW**	*Sen. Hoyle*
SB 1666	**SUNSET BEACH/SEWAGE COLLECTION SYSTEM**	*Sen. Soles*
SB 1804	**TRYON/BOILING SPRINGS OCCUPANCY TAX**	*Sen. Apodaca*
SB 2009	**PUBLIC-PRIVATE PARTNERSHIPS FOR SCHOOLS**	*Sen. Malone*
SB 2010	**AIRCRAFT MECHANICS' LIEN**	*Sen. Hagan*
SB 2011	**RAILROAD CARS SALES TAX CHANGES**	*Sen. Hoyle*
SB 2043	**INCREASE MORTGAGE LENDING FEES**	*Sen. Rand*

Adjournment

ATTACHMENT 2

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — July 11, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Amy Simes	NCDENR
Erin Rieder	CWMTF
Francis DeLuca	Americans for Prosperity N.C.
Lydia Varn	NCACC
Daniel Cordaro	NCACC
Jim Stegall	U.C.P.S.
[illegible]	NCATL
Cole Taylor	Governor's Office
Molly Diggis	Sierra Club
Max Merrill	Poyner & Spruill
Katherine Davis	ElectriCities of NC

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — July 11, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dana Simpson	Smith Anderson
Boyd Cuble	City of Charlotte
Ron Kimble	City of Charlotte
Paul Meyer	NC ACC
Franic Colonna	Triangle Rent A Car
Anna Mitchell	NCDOR
Karl Knapp	DOR
Sam McEwen	DOR
Lennie Collins	DOR
Ryan Presley	Rep. Glazier
Jennifer Willis	Wake County

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — July 11, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Gene Ainsworth	Cendant
Henry Jones	Attorney - Raleigh
Josh Tracy	NC WRC
Richard Hamilton	NCWRC
Lisa Hocutt	NCWRC
Gordon Myers	NCWRC
Joe Stewart	IFNC
Erin Kinney	NCCN
Joseph Smith	NC Commissioner of Banks
McNeil Chestnut	Spec. Dep. A.G. for the Comm of Banks
[illegible]	[illegible]
[illegible]	NCSA
Anthony Allen	NCACC

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — July 11, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jonetta Allen	Wachovia
James Andrews	NC State AFL-CIO
DAVID BARNES	Poyner Spruill
Cameron Contizano	Daily Bulletin
Molly Fowler	Wachovia
	WCPSS
	WCPSS
	Farm Bureau
Derek Graham	DRI
Mohammad Jenabian	HHA
PAUL GROBE	WACHOVIA

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — July 11, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Henry Hutaff	N.P.I.B.A.
Elizabeth Dalton	NCRMA
Betty Turner	BAC
Elizabeth McHaffey	TIMCO
Patsy Kinsey	City of Charlotte
Robert Bridges	WACHOVIA
Steve Haynes	DPI
Rita L. Joyner	SBE
Larry Wilson	SBE
Lee Hodges	KCLH
Martha A. McConnell	Carolinas Healthcare System

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
Natalie Englen	Charlotte Chamber
Lee Keesler	Arts & Science Council - Charlotte / Meck
PERRI MORGAN	NC100
Becki Gray	Civitas Institute
Barbara Carsel	BCOR
Charles Marshall	Brooks Pierce
Jim Phillips	" "
Tom Bloss	City of Wilmington
[illegible]	
[illegible]	NCSEA
[illegible]	
Stephanie Dorko	Charlotte Chamber
Bill Scoggin	ECCU
Tracy Kimbrell	Parker Poe
[illegible]	NCAE
Leslie [illegible]	NCBA
Ben Markus	NCSEA
DON HORNE	NC DOC
Andy Romanet	NCLM
Jamie Fitzgerald	NAIOP
[illegible]	NCSHA
Johanna Reese	DOT
Lauren Rogers	NCLM
BILL RUSTIN	AGC

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — July 11, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Paul Stock	NCBA
Tom Below	NCED
David Cartwright	NC Bar Assoc
Chris Hayes	Civitas Institute
Chad Hinton	Civitas Institute
Angie Hair	Margaret Taylor
[illegible]	RAM -
Amy Schulder	Hobbs & Co

CORRECTED NOTICE:
HB 1963 – ADDED

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

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

DAY & DATE: **Tuesday, July 11, 2006**

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

LOCATION: **Room 544, LOB**

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

HB 1963 – REVENUE LAWS TECH. & MOTOR FUEL TAX CHANGES – Rep. Luebke

SB 402 – WATER/UTILITIES SAVINGS IN GOVT. FACILITIES – Sen. Kinnaird

SB 948 – AMEND BOATING SAFETY/VESSEL TITLING LAW – Sen. Hoyle

SB 1666 – SUNSET BEACH/SEWAGE COLLECTION SYSTEM – Sen. Soles

SB 1804 – TRYON/BOILING SPRINGS OCCUPANCY TAX – Sen. Apodaca

SB 2009 – PUBLIC-PRIVATE PARTNERSHIPS FOR SCHOOLS – Sen. Malone

SB 2010 – AIRCRAFT MECHANICS' LIEN – Sen. Hagan

SB 2011 – RAILROAD CARS SALES TAX CHANGES – Sen. Hoyle

SB 2043 – INCREASE MORTGAGE LENDING FEES – Sen. Rand

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

I hereby certify this notice was filed by the committee clerk at the following offices at **7:05pm** on **July 10, 2006**:

X Principal Clerk
X Reading Clerk - House Chamber

Jason A. Cannon (Committee Clerk)

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

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

DAY & DATE: **Tuesday, July 11, 2006**

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

LOCATION: **Room 544, LOB**

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

SB 402 – WATER/UTILITIES SAVINGS IN GOVT. FACILITIES – Sen. Kinnaird

SB 948 – AMEND BOATING SAFETY/VESSEL TITLING LAW – Sen. Hoyle

SB 1666 – SUNSET BEACH/SEWAGE COLLECTION SYSTEM – Sen. Soles

SB 1804 – TRYON/BOILING SPRINGS OCCUPANCY TAX – Sen. Apodaca

SB 2009 – PUBLIC-PRIVATE PARTNERSHIPS FOR SCHOOLS – Sen. Malone

SB 2010 – AIRCRAFT MECHANICS' LIEN – Sen. Hagan

SB 2011 – RAILROAD CARS SALES TAX CHANGES – Sen. Hoyle

SB 2043 – INCREASE MORTGAGE LENDING FEES – Sen. Rand

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

I hereby certify this notice was filed by the committee clerk at the following offices at **6:20pm** on **July 10, 2006**:

X Principal Clerk
X Reading Clerk - House Chamber

Jason A. Cannon (Committee Clerk)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 2010

Judiciary I Committee Substitute Adopted 6/19/06
Finance Committee Substitute Adopted 6/22/06
PROPOSED HOUSE COMMITTEE SUBSTITUTE S2010-CSRBf-79 [v.1]

7/10/2006 7:05:51 PM

Short Title: Aircraft Mechanics' Lien/Winemaking. (Public)

Sponsors:

Referred to:

May 26, 2006

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A STATUTORY LIEN FOR UNPAID LABOR, SKILL, OR MATERIALS ON AN AIRCRAFT AND FOR UNPAID STORAGE OF AN AIRCRAFT.

The General Assembly of North Carolina enacts:

PART I. AIRCRAFT MECHANICS' LIEN

SECTION 1.1. Chapter 44A of the General Statutes is amended by adding a new Article to read:

"Article 5.

"Aircraft Labor and Storage Liens.

"**§ 44A-50. Definitions.**

As used in this Article, the following terms mean:

(1) Aircraft. – As the term is defined in G.S. 63-1(3), or any engine, part, component, or accessory, whether affixed to or separate from the aircraft.

(2) Lienor. – A person entitled to a lien under this Article.

(3) Owner. – As the term is defined in G.S. 44A-1(3) for an aircraft, or any person authorized by an owner, as defined in G.S. 44A-1(3), to perform, contract, or arrange for the provision of labor, skill, materials, or storage with respect to any aircraft.

(4) Person. – Any individual, corporation, association, partnership, whether limited or general, limited liability company, or other entity.

"**§ 44A-55. Persons entitled to a lien on an aircraft.**

Any person who has expended labor, skill, or materials on an aircraft or has furnished storage for an aircraft at the request of its owner has a perfected lien on the aircraft beginning on the date the expenditure of labor, skill, or materials or the storage

commenced, for the contract price for the expenditure of labor, skill, or materials or for the storage, or, in the absence of a contract price, for the reasonable worth of the expenditure of labor, skill, or materials, or of the storage. The lien under this section survives even if the possession of the aircraft is surrendered by the lienor.

"**§ 44A-60. Notice of lien on an aircraft.**

(a) The lien under G.S. 44A-55 expires 120 days after the date the lienor voluntarily surrenders possession of the aircraft, unless the lienor, prior to the expiration of the 120-day period, files a notice of lien in the office of the clerk of court of the county in which the labor, skill, or materials were expended on the aircraft, or the storage was furnished for the aircraft.

(b) The notice of lien shall state all of the following:

(1) The name of the lienor.

(2) The name of the registered owner of the aircraft, if known.

(3) The name of the person with whom the lienor entered into a contract for labor, skill, or materials on the aircraft, or storage of the aircraft.

(4) A description of the aircraft sufficient for identification.

(5) The amount for which the lien is claimed.

(6) The dates upon which the expenditure of labor, skill, materials, or storage was commenced and completed, or, if not completed, the date through which the claimed amount is calculated.

(c) The notice of lien shall be sworn to or affirmed, and subscribed by the lienor, or by someone on the lienor's behalf having personal knowledge of the facts.

(d) The notice of lien shall be in substantially the following form:

'NOTICE OF LIEN ON AIRCRAFT

[Lienor] Lienor, v. [Owner] Owner

Notice is hereby given that [Lienor](name) claims a lien upon _____[aircraft](describe the aircraft) for labor, skill, or materials expended on, and for storage furnished for, this aircraft; that the name of the registered owner or reputed owner, if the aircraft is not registered or the registered owner is not known, is [Owner](name), that the labor, skill, or materials were expended on the aircraft commencing the ____ day of ____, and storage was furnished on the aircraft commencing the ____ day of ____, and the labor, skill, materials, and storage furnished by the lienor [was completed] [is ongoing] on the ____ day of ____; that 120 days have not elapsed since the aircraft was released by the lienor; that the amount the lienor demands for the labor, skill, materials, and storage furnished, as of the date hereof is $_____(amount); that no part thereof has been paid except $_____(amount); and that there is now due and remaining unpaid, after deducting all credits and offsets, the sum of $_____(amount), in which amount [Lienor](name) claims a lien upon the aircraft.

(Signed)_____(Lienor)

Address of Lienor_____

State of North Carolina
County of _____

Sworn to (or affirmed) and subscribed before me this day by [name of principal].
Date: _____ [Official Signature of Notary]
_____ [Notary's printed or typed name], Notary Public
_____ My Commission Expires:[Date]
[Official Seal]'

"**§ 44A-65. Notice of lien filed by the clerk of court.**

Upon presentation of a notice of lien pursuant to this Article, the clerk of court shall file the notice of lien and shall index the notice of lien in a record maintained by the clerk for that purpose.

"**§ 44A-70. Priority of a lien on an aircraft.**

The lien under this Article shall have priority over perfected and unperfected security interests.

"**§ 44A-75. Termination of a lien on an aircraft.**

Any lien under this Article shall be terminated upon receipt by the lienor of the full amount owed for the labor, skill, or materials on the aircraft, and for storage of the aircraft, which amount shall not be limited to any amount shown on the notice of lien filed under G.S. 44A-60, if a notice of lien has been filed by the lienor. Upon receipt of the amount owed, the lienor or the lienor's agent shall release the aircraft to the owner, if the aircraft is in the possession of the lienor, and shall, within 20 days following a request in writing by the aircraft owner, file with the clerk of court a notice of satisfaction of lien, if a notice of lien has been filed by the lienor. A notice of satisfaction of lien shall state that the amount owed for the lienor's expenditure of labor, skill, or materials on the aircraft, and for the storage of the aircraft, has been paid and the lien against the aircraft has been terminated. The notice of satisfaction of lien shall be sworn to or affirmed, and subscribed by the lienor or by someone on the lienor's behalf having personal knowledge of the facts. Upon the filing of a notice of satisfaction of lien, the clerk of court shall make an entry of acknowledgment of satisfaction in the index.

"**§ 44A-80. Fees.**

The clerk of court shall collect fees for filing, copying, and certifying any document under this Article as set forth in G.S. 7A-308.

"**§ 44A-85. Enforcement of lien by sale.**

A lien filed under this Article may be enforced in accordance with G.S. 44A-4, and the proceeds of sale shall be applied as set forth in G.S. 44A-5, except that the three-day time period set forth in G.S. 44A-4(a) for the lienor to file a contrary statement of the amount of the lien at the time of the filing of a complaint by the owner shall be extended to 30 days. An owner may seek immediate possession of an aircraft in accordance with G.S. 44A-4.

"**§ 44A-90. Title of purchaser.**

(a) A purchaser for value at a properly conducted sale under this Article, and a purchaser for value without constructive notice of a defect in the sale, whether or not the

purchaser is the lienor or an agent of the lienor, acquires title to the property free of any interests over which the lienor was entitled to priority.

(b) Upon the completion of a sale conducted under this Article, the lienor or a person acting on behalf of the lienor, who conducted the sale shall furnish to the purchaser for value a bill of sale for the aircraft signed by the person who conducted the sale that includes a statement that the sale was conducted in accordance with this Article."

SECTION 1.2. G.S. 44A-2(a) reads as rewritten:

"(a) Any person who tows, alters, repairs, stores, services, treats, or improves personal property other than a motor vehicle or an aircraft in the ordinary course of his business pursuant to an express or implied contract with an owner or legal possessor of the personal property has a lien upon the property. The amount of the lien shall be the lesser of

(1) The reasonable charges for the services and materials; or
(2) The contract price; or
(3) One hundred dollars ($100.00) if the lienor has dealt with a legal possessor who is not an owner.

This lien shall have priority over perfected and unperfected security interests."

SECTION 1.3. This Part becomes effective October 1, 2006, and applies to labor, skills, or materials furnished on an aircraft, or storage provided for an aircraft, on or after that date.

PART II. WINEMAKING ON PREMISES PERMIT

SECTION 2.1. G.S. 18B-1001 is amended by adding a new subdivision to read:

"(17) Winemaking on Premises Permit. – A permit may be issued to a business, located in a jurisdiction where the sale of unfortified wine is allowed, where individual customers who are 21 years old or older may purchase ingredients and rent the equipment, time, and space to make unfortified wine for personal use in amounts set forth in 27 C.F.R. § 24.75. Except for wine produced for testing equipment or recipes and samples pursuant to this subdivision, the permit holder shall not engage in the actual production or manufacture of wine. Samples may be consumed on the premises only by a person who has a nonrefundable contract to ferment at the premises, and the samples may not exceed one ounce per sample. All wine produced at a winemaking on premises facility shall be removed from the premises by the customer, and may only be used for home consumption and the personal use of the customer."

SECTION 2.2. G.S. 18B-307 reads as rewritten:

"**§ 18B-307. Manufacturing offenses.**

(a) Offenses. – It shall be unlawful for any person, except as authorized by this Chapter, to:

(1) Sell or possess equipment or ingredients intended for use in the manufacture of any alcoholic beverage, except equipment and ingredients provided under a Brew on Premises permit or a Winemaking on Premises permit; or

(2) Knowingly allow real or personal property owned or possessed by him to be used by another person for the manufacture of any alcoholic beverage, except pursuant to a Brew on Premises permit or a Winemaking on Premises permit.

(b) Unlawful Manufacturing. – Except as provided in G.S. 18B-306, it shall be unlawful for any person to manufacture any alcoholic beverage, except at an establishment with a Brew on Premises permit or a Winemaking on Premises permit, without first obtaining the applicable ABC permit and revenue licenses.

(c) Second Offense of Manufacturing. – A second offense of unlawful manufacturing of alcoholic beverage shall be a Class I felony."

SECTION 2.3. G.S. 18B-902(d) is amended by adding a new subdivision to read:

"(38) Winemaking on premises permit. – $400.00."

SECTION 2.4. This Part is effective when it becomes law.

PART III.

SECTION 3.1. Except as otherwise provided, this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 3

SENATE BILL 2010

Judiciary I Committee Substitute Adopted 6/19/06
Finance Committee Substitute Adopted 6/22/06

Short Title: Aircraft Mechanics' Lien. (Public)

Sponsors:

Referred to:

May 26, 2006

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A STATUTORY LIEN FOR UNPAID LABOR, SKILL, OR MATERIALS ON AN AIRCRAFT AND FOR UNPAID STORAGE OF AN AIRCRAFT.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 44A of the General Statutes is amended by adding a new Article to read:

"Article 5.

"Aircraft Labor and Storage Liens.

"**§ 44A-50. Definitions.**

As used in this Article, the following terms mean:

(1) Aircraft. – As the term is defined in G.S. 63-1(3), or any engine, part, component, or accessory, whether affixed to or separate from the aircraft.

(2) Lienor. – A person entitled to a lien under this Article.

(3) Owner. – As the term is defined in G.S. 44A-1(3) for an aircraft, or any person authorized by an owner, as defined in G.S. 44A-1(3), to perform, contract, or arrange for the provision of labor, skill, materials, or storage with respect to any aircraft.

(4) Person. – Any individual, corporation, association, partnership, whether limited or general, limited liability company, or other entity.

"**§ 44A-55. Persons entitled to a lien on an aircraft.**

Any person who has expended labor, skill, or materials on an aircraft or has furnished storage for an aircraft at the request of its owner has a perfected lien on the aircraft beginning on the date the expenditure of labor, skill, or materials or the storage commenced, for the contract price for the expenditure of labor, skill, or materials or for the storage, or, in the absence of a contract price, for the reasonable worth of the

expenditure of labor, skill, or materials, or of the storage. The lien under this section survives even if the possession of the aircraft is surrendered by the lienor.

"**§ 44A-60. Notice of lien on an aircraft.**

(a) The lien under G.S. 44A-55 expires 120 days after the date the lienor voluntarily surrenders possession of the aircraft, unless the lienor, prior to the expiration of the 120-day period, files a notice of lien in the office of the clerk of court of the county in which the labor, skill, or materials were expended on the aircraft, or the storage was furnished for the aircraft.

(b) The notice of lien shall state all of the following:

(1) The name of the lienor.

(2) The name of the registered owner of the aircraft, if known.

(3) The name of the person with whom the lienor entered into a contract for labor, skill, or materials on the aircraft, or storage of the aircraft.

(4) A description of the aircraft sufficient for identification.

(5) The amount for which the lien is claimed.

(6) The dates upon which the expenditure of labor, skill, materials, or storage was commenced and completed, or, if not completed, the date through which the claimed amount is calculated.

(c) The notice of lien shall be sworn to or affirmed, and subscribed by the lienor, or by someone on the lienor's behalf having personal knowledge of the facts.

(d) The notice of lien shall be in substantially the following form:

'NOTICE OF LIEN ON AIRCRAFT

[Lienor] Lienor, v. [Owner] Owner

Notice is hereby given that [Lienor](name) claims a lien upon _____[aircraft](describe the aircraft) for labor, skill, or materials expended on, and for storage furnished for, this aircraft; that the name of the registered owner or reputed owner, if the aircraft is not registered or the registered owner is not known, is [Owner](name), that the labor, skill, or materials were expended on the aircraft commencing the ____ day of ____, and storage was furnished on the aircraft commencing the ___ day of ___, and the labor, skill, materials, and storage furnished by the lienor [was completed] [is ongoing] on the ___ day of ___; that 120 days have not elapsed since the aircraft was released by the lienor; that the amount the lienor demands for the labor, skill, materials, and storage furnished, as of the date hereof is $____(amount); that no part thereof has been paid except $____(amount); and that there is now due and remaining unpaid, after deducting all credits and offsets, the sum of $____(amount), in which amount [Lienor](name) claims a lien upon the aircraft.

(Signed)_____(Lienor)

Address of Lienor_____

State of North Carolina

County of_____

Sworn to (or affirmed) and subscribed before me this day by [name of principal].
Date: [Official Signature of Notary]
[Notary's printed or typed name], Notary Public
My Commission Expires:[Date]
[Official Seal]'

"**§ 44A-65. Notice of lien filed by the clerk of court.**

Upon presentation of a notice of lien pursuant to this Article, the clerk of court shall file the notice of lien and shall index the notice of lien in a record maintained by the clerk for that purpose.

"**§ 44A-70. Priority of a lien on an aircraft.**

The lien under this Article shall have priority over perfected and unperfected security interests.

"**§ 44A-75. Termination of a lien on an aircraft.**

Any lien under this Article shall be terminated upon receipt by the lienor of the full amount owed for the labor, skill, or materials on the aircraft, and for storage of the aircraft, which amount shall not be limited to any amount shown on the notice of lien filed under G.S. 44A-60, if a notice of lien has been filed by the lienor. Upon receipt of the amount owed, the lienor or the lienor's agent shall release the aircraft to the owner, if the aircraft is in the possession of the lienor, and shall, within 20 days following a request in writing by the aircraft owner, file with the clerk of court a notice of satisfaction of lien, if a notice of lien has been filed by the lienor. A notice of satisfaction of lien shall state that the amount owed for the lienor's expenditure of labor, skill, or materials on the aircraft, and for the storage of the aircraft, has been paid and the lien against the aircraft has been terminated. The notice of satisfaction of lien shall be sworn to or affirmed, and subscribed by the lienor or by someone on the lienor's behalf having personal knowledge of the facts. Upon the filing of a notice of satisfaction of lien, the clerk of court shall make an entry of acknowledgment of satisfaction in the index.

"**§ 44A-80. Fees.**

The clerk of court shall collect fees for filing, copying, and certifying any document under this Article as set forth in G.S. 7A-308.

"**§ 44A-85. Enforcement of lien by sale.**

A lien filed under this Article may be enforced in accordance with G.S. 44A-4, and the proceeds of sale shall be applied as set forth in G.S. 44A-5, except that the three-day time period set forth in G.S. 44A-4(a) for the lienor to file a contrary statement of the amount of the lien at the time of the filing of a complaint by the owner shall be extended to 30 days. An owner may seek immediate possession of an aircraft in accordance with G.S. 44A-4.

"**§ 44A-90. Title of purchaser.**

(a) A purchaser for value at a properly conducted sale under this Article, and a purchaser for value without constructive notice of a defect in the sale, whether or not the purchaser is the lienor or an agent of the lienor, acquires title to the property free of any interests over which the lienor was entitled to priority.

(b) Upon the completion of a sale conducted under this Article, the lienor or a person acting on behalf of the lienor, who conducted the sale shall furnish to the purchaser for value a bill of sale for the aircraft signed by the person who conducted the sale that includes a statement that the sale was conducted in accordance with this Article."

SECTION 2. G.S. 44A-2(a) reads as rewritten:

"(a) Any person who tows, alters, repairs, stores, services, treats, or improves personal property other than a motor vehicle or an aircraft in the ordinary course of his business pursuant to an express or implied contract with an owner or legal possessor of the personal property has a lien upon the property. The amount of the lien shall be the lesser of

(1) The reasonable charges for the services and materials; or
(2) The contract price; or
(3) One hundred dollars ($100.00) if the lienor has dealt with a legal possessor who is not an owner.

This lien shall have priority over perfected and unperfected security interests."

SECTION 3. This act becomes effective October 1, 2006, and applies to labor, skills, or materials furnished on an aircraft, or storage provided for an aircraft, on or after that date.

SENATE BILL 2010:
Aircraft Mechanics' Lien/Winemaking

BILL ANALYSIS

Committee:	House Finance	**Date:**	July 10, 2006
Introduced by:	Sen. Hagan	**Summary by:**	Cindy Avrette
Version:	PCS to Third Edition S2010-CSRBf-79		Committee Counsel

SUMMARY: ***Senate Bill 2010 would create a process for filing and enforcing statutory liens for unpaid labor, skill or materials on an aircraft and for unpaid storage of an aircraft. The bill is in finance because it authorizes the clerk of court to collect fees for filing, copying, and certifying the liens. The amount of the fee is the amount set in G.S. 7A-308.[1] The bill becomes effective October 1, 2006, and applies to labor, skills, or materials furnished on an aircraft, or storage provided for an aircraft, on or after that date.***

The proposed House committee substitute adds the provisions of House Bill 1025, Winemaking on Premises Permit, to the bill. The House passed House Bill 1025 last session. The bill is in Senate Finance. The PCS would create a new 'winemaking on premises' permit to businesses where customers may purchase ingredients and rent the equipment, time, and space to make unfortified wine for personal use. There is a $400 application fee for the permit. The bill is effective when it becomes law

PART I: AIRCRAFT MECHANICS' LIEN

G.S. 44A-2(a) grants a lien in personal property, other than a motor vehicle, that a person tows, alters, repairs, stores, services, treats, or improves in the ordinary course of business pursuant to an express or implied contract. The lien is for the contract amount or the reasonable charges for the services and materials. There is no provision for a notice of lien to be filed in connection with this lien.

Part I of the proposed House committee substitute for Senate Bill 2010 would create a procedure under which an aircraft mechanic could file a notice of lien for labor, skills and material on an aircraft or for storage of an aircraft when the charges for these services and materials are not paid.

Federal law, through the Federal Aviation Authority (FAA), governs how title to aircraft are registered and transferred. Under federal law, in order to perfect a security or lien interest in an aircraft, a notice of lien, as permitted under state law, must be filed with the FAA. Because North Carolina, unlike many other states, does not have a process permitting the filing of a notice of lien for mechanics' work on and storage of aircraft, NC mechanics cannot get a secured lien interest on aircraft they service even though NC law grants a lien interest in the aircraft for their charges

Also, because this charges, although a lien on the aircraft, cannot be secured under federal law, under the bankruptcy laws, these liens are not treated as secured so NC mechanics lose the benefit of their liens when the owner of an aircraft they have provided services to files bankruptcy. Mechanics in other states that provided a method for filing a notice of lien are treated as secured creditors under the bankruptcy law.

Section 1.1 creates the procedural process for an aircraft mechanics' lien:

G.S. 44A-50 contains definitions. The definition of an aircraft includes parts of an aircraft furnished, whether or not those parts are affixed to the aircraft.

[1] The fee for filing a document is $6.00 for the first page and .25 for each additional page thereafter. The fee for copying a document is $2.00 for the first page and .25 for each additional page thereafter. The cost for certifying a document is $3.00.

G.S. 44A-55 grants a lien to a person who provides labor, skills or materials on an aircraft or who stores an aircraft at the request of the owner. The amount of the lien is the contract price for the work or storage, and if no contract, the reasonable worth of the service. The lien survives even if possession is surrendered.

G.S. 44A-60 provides for the filing of a notice of lien with the clerk of court. If possession of the aircraft has been surrendered, a notice must be filed within 120 days of the release of the aircraft in order for the lien to continue.

G.S. 44A-70 gives these liens priority over other perfected and unperfected security interests in the aircraft.

G.S. 44A-75 requires the lienor to release possession of the aircraft upon payment and to file a notice of satisfaction of lien with the clerk.

G.S. 44A-85 provides for the process for enforcing the lien by sale and specifies how the proceeds of the sale are to be distributed. G.S. 44A-4 (attached) permits the aircraft to be sold by public or private sale if the lien is not satisfied within 30 days following the date of maturity. This statute requires notice of the sale to be given to the owner, permits the owner to stay the sale by filing suit contesting the amount of the lien, permits the owner to obtain possession of the aircraft by depositing the amount of the lien with the clerk, sets out the procedures to be followed for conducting a private or a public sale. G.S. 44A-5 (attached) allows the proceeds of the sale to be used to cover the cost of the sale, payment of the obligation secured by the lien, and payment of the balance to the owner.

G.S. 44A-90 provides for the transfer of title to the purchaser of value at a lien sale by a bill of sale.

Section 1.2 makes a conforming change to the statute granting liens for services on other personal property.

This part of the bill becomes effective October 1, 2006 and applies to work furnished or storage provided on or after that date.

PART II. WINEMAKING ON PREMISES PERMIT

Under G.S. 18B-307 it is generally unlawful for any person without the appropriate ABC permit to:

- Sell or possess equipment or ingredients intended for use in the manufacture of any alcoholic beverage
- Knowingly allow real or personal property owned or possessed by him to be used by another person for the manufacture of any alcoholic beverage.
- Manufacture any alcoholic beverage, without first obtaining the applicable ABC permit and revenue licenses.

There are two notable exceptions to the general prohibition against the unlicensed manufacture of alcoholic beverages. G.S. 18B-306 allows an individual to make, possess, and transport native wines and malt beverages for his own use and for the use of his family and guests; and G.S. 18B-1001(14) provides for the manufacture of malt beverages pursuant to a "Brew on Premises" permit. A brew on premises permit authorizes the holder to rent the equipment and space necessary to produce malt beverages only; it does not apply to the manufacture of wine.

A Brew on Premises permit may be issued to a business, located in a jurisdiction where the sale of malt beverages is allowed, where individual customers who are 21 years old or older may purchase ingredients and rent the equipment, time, and space to brew malt beverages for personal use in amounts set forth in federal law. The statute requires that the customer do all of the following:

a. Select a recipe and kettle.
b. Weigh out the proper ingredients and add them to the kettle.
c. Transfer the wort to the fermenter.
d. Add the yeast.
e. Place the ingredients in a fermentation room.
f. Filter, carbonate, and bottle the malt beverage.

Part II of the proposed House committee substitute for Senate Bill 2011 would provide for the licensing of commercial establishments in which individuals could purchase ingredients and rent equipment, time, and space to make unfortified wine on the premises for their personal and family use, similar to the current brew on premises permit for making malt beverages. The permit holder will not engage in the actual production of the wine, and all wine must be removed from the premises by the customer and used only for home consumption and the customer's personal use. The fee for the permit is $400. That is same amount as a 'Brew on Premises' permit.

This part of the bill would be effective when it becomes law.

Walker O. Reagan, counsel to the Senate Judiciary I Committee, substantially contributed to Part I of this summary.

Brenda Carter, counsel to the House Committee on Alcoholic Beverage Control, substantially contributed to this summary.

S2010e3-SMRB-CSRB

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

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

DATE: July 10, 2006

TO: Representative Luebke

FROM: Rodney Bizzell
Fiscal Research Division

RE: PCS S2010 Aircraft Mechanics Lien

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
GENERAL FUND					
REVENUES:	See "Assumptions and Methodology" p.2				
EXPENDITURES:	Possible fiscal impact, but is not assumed significant.				
Correction	No significant impact anticipated.				
Judicial	Possible fiscal impact, but is not assumed significant. See "Assumptions and Methodology" p.3.				
ADDITIONAL PRISON BEDS*	None anticipated. Possible, small impact on local jails.				
POSITIONS: (cumulative)	None anticipated.				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Alcoholic Beverage Control Commission; Department of Correction; Judicial Branch; Local Governments.

EFFECTIVE DATE: When it becomes law.

**This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.*

BILL SUMMARY: Senate Bill 2010 would create a process for filing and enforcing statutory liens for unpaid labor, skill or materials on an aircraft and for unpaid storage of an aircraft. The bill is in finance because it authorizes the clerk of court to collect fees for filing, copying, and certifying the liens. The amount of the fee is the amount set in G.S. 7A-308.1. The bill becomes effective October 1, 2006, and applies to labor, skills, or materials furnished on an aircraft, or storage provided for an aircraft, on or after that date.

The proposed House committee substitute adds the provisions of House Bill 1025, Winemaking on Premises Permit, to the bill. The House passed House Bill 1025 last session. The bill is in Senate Finance. The PCS would:

Amend G.S. 18B-1001 to allow the Alcoholic Beverage Control Commission to issue permits to winemaking-on-premises businesses, thereby authorizing such businesses to sell ingredients and rent equipment, time, and space for the production of unfortified wine by individual consumers who are at least 21 years old, and only in jurisdictions where unfortified wine sales are permitted. Also prohibits the manufacture of unfortified wine by a permit holder, with the exclusion of samples for testing recipes or equipment, and requires that any wine produced must be for the personal use of the customer only.

Rewrite G.S. 18B-307 to prohibit:

- The sale or possession of equipment or ingredients intended for use in manufacturing an alcoholic beverage, except that allowed under a Brew on Premises or Winemaking on Premises permit.
- Knowingly allowing another person to use one's real or personal property for the manufacture of an alcoholic beverage, except that allowed under a Brew on Premises or Winemaking on Premises permit.
- The manufacture of an alcohol beverage without the applicable ABC permit and revenue licenses, except for an establishment with a Brew on Premises or Winemaking on Premises permit.

Amend G.S. 18B-902(d) to establish a permit fee of $400.

ASSUMPTIONS AND METHODOLOGY

General

Part I of the bill is related to the aircraft lien. The bill authorizes the clerk of court to collect fees for filing, copying and certifying the liens; however, there is no general fund impact for this part.

Part II would charge a fee of $400 for each winemaking on premises permit. While it is unknown how many businesses would apply for the permit, a similar permit for brewing beer on the premises currently has no permit holders. Therefore, it is assumed that any revenue generated from the winemaking on premises permit fee will be an insignificant amount.

PART II:

Department of Correction – Division of Prisons

The Sentencing and Policy Advisory Commission prepares prison population projections for each criminal penalty bill. The Commission assumes for each bill that increasing criminal penalties does not have a deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume savings due to deterrent effects for this bill or any criminal penalty bill. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available over the immediate five-year horizon, or beyond.*

In accordance with G.S. 18B-102(b), any first offense under this bill is a Class 1 misdemeanor. A second or subsequent manufacturing offense is a Class I felony under G.S. 18B-307(b). Because the proposal creates new offenses, there is no historical data from which to estimate its impact on the State's prison population. Thus, it is not known how many offenders might be convicted for these manufacturing offenses, or how many offenders could be

repeat offenders. *However, Fiscal Research does not anticipate a significant amount of new charges, convictions, and sentences as a result of this proposal.*

Class 1 misdemeanor: In FY 2004/05, 19% of Class 1 misdemeanor convictions resulted in active sentences, with an average estimated time served of 30.7 days. *Because offenders serving active sentences of 90 days or less are housed in county jails, first offenses under this proposal would not have a significant impact on the prison population. The impact on local jail populations is not known.*

Class I felony: In FY 2004/05, 15% of Class I convictions resulted in active sentences, with an average estimated time served of 7 months; 85% of convictions resulted in community or intermediate sentences, predominantly special, intensive, or general supervision probation. *Though presumed unlikely, if twelve new Class I convictions were to occur for the new repeat offense per year, the combination of active sentences and probation revocations would necessitate one additional prison bed the first year, and four additional prison beds the second.* Assuming this threshold and a medium custody level, the construction of additional prison beds could cost the State $65,340 the first year, and $282,269 the second year; operating costs could be $26,680 the first year, and $109,922 the second.

Department of Correction – Division of Community Corrections

Assuming some additional intermediate or community sentencing, additional costs for probation supervision could also be incurred. General supervision from a probation officer costs the Division of Community Corrections $1.93 per offender, per day. Special sanctions under intermediate sentences generate higher costs. Intensive supervision probation, the most commonly utilized intermediate sanction, costs $12.95 (including probation officer cost) per offender per day and is for an average of six months. Electronic house arrest costs $8.64 (including probation officer cost). Such costs are projected to begin in FY 2007-2008, due to the effective date of December 1 and the lag time between charge and conviction.

In addition, offenders supervised by DCC are required to pay a $30 per month supervision fee. Those on electronic house arrest or electronic monitoring must also pay a one-time $90 fee. This money is collected by the Court System and goes to the General Fund. The percentage of fees actually collected cannot be determined from the Court's records, but survey information indicates that the compliance rate for supervised probationers is around 48%.

Judicial Branch

For most criminal penalty bills, the Administrative Office of the Courts (AOC) provides Fiscal Research with an analysis of the fiscal impact of a specific bill. For such bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

Currently, the AOC has only one offense code for existing manufacturing offenses under G.S. 18B-307: "Manufacture Liquor No Permit," which is coded as a Class 1 misdemeanor. There is no offense code associated with the Class I felony for second or subsequent conviction of a manufacturing offense.

In FY 2004/05, there was 1 conviction under G.S. 18B-307(b), "Manufacture Liquor No Permit." The lack of an offense code suggests that few charges and convictions occur for existing manufacturing offenses; however, it is unclear whether the reference to "liquor" in the offense description for this offense code is an error, or simply reflects a lack of prior charges/convictions for the unlawful manufacture of an alcoholic beverage.

Nevertheless, any additional charges resulting from the proposed offenses could increase workload and generate additional costs to the court system. The AOC estimates Class 1 misdemeanor court-time costs of $3,153 per trial, and $224 per plea; Class I felony costs are $6,028 and $274, respectively.

SOURCES OF DATA: NC Alcoholic Beverage Control Commission; Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; and Office of State Construction.

TECHNICAL CONSIDERATIONS: The subdivision number of the new permit appears to be an error (G.S. 18B-1001(16)). The bill adds the new permit type as a "new subdivision," but subdivision (16) already exists as the "Wine Shop Permit." The bill makes no reference to repealing or replacing the existing subdivision.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☒Committee Substitute #2 for

SB 2010 A BILL TO BE ENTITLED AN ACT TO ESTABLISH A STATUTORY LIEN FOR UNPAID LABOR, SKILL, OR MATERIALS ON AN AIRCRAFT AND FOR UNPAID STORAGE OF AN AIRCRAFT.

☒ With a favorable report as to House committee substitute bill, which changes the title, unfavorable as to Senate committee substitute bill 2.

(FOR JOURNAL USE ONLY)

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

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 2

SENATE BILL 402*
House Committee Substitute Favorable 6/28/06

Short Title: Water/Utilities Savings in Govt. Facilities. (Public)

Sponsors:

Referred to:

March 7, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT GUARANTEED ENERGY SAVINGS CONTRACTS INCLUDE CONSERVATION MEASURES FOR WATER AND OTHER UTILITIES, TO RAISE THE CAP FOR GUARANTEED ENERGY SAVINGS CONTRACTS, TO EXPAND THE STATE'S ENERGY POLICY AND LIFE-CYCLE COST ANALYSIS TO INCLUDE THE CONSERVATION OF WATER AND OTHER UTILITIES, AND TO MAKE CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. The title of Article 3B of Chapter 143 of the General Statutes reads as rewritten:

"Article 3B.

~~Energy~~ Conservation of Energy, Water, and Other Utilities in ~~Public~~ Government Facilities."

SECTION 2. G.S. 143-64.17 reads as rewritten:

"**§ 143-64.17. Definitions.**

As used in this Part:

(1) "Energy conservation measure" means a facility or meter alteration, training, or services related to the operation of the ~~facility,~~facility or meter, when the alteration, training, or services provide anticipated energy ~~savings.~~savings or capture lost revenue. Energy conservation measure includes any of the following:

a. Insulation of the building structure and systems within the building.

b. Storm windows or doors, caulking, weatherstripping, multiglazed windows or doors, heat-absorbing or heat-reflective glazed or coated window or door systems, additional glazing, reductions in glass area, or other window or door system modifications that reduce energy consumption.

c. Automatic energy control systems.
d. Heating, ventilating, or air-conditioning system modifications or replacements.
e. Replacement or modification of lighting fixtures to increase the energy efficiency of a lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable State or local building code or is required by the light system after the proposed modifications are made.
f. Energy recovery systems.
g. Cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings.
~~h. Other energy conservation measures.~~
i. Faucets with automatic or metered shut-off valves, leak detection equipment, water meters, water recycling equipment, and wastewater recovery systems.
j. Other energy conservation measures that conserve energy, water, or other utilities.

(2) "Energy savings" means a measured reduction in fuel costs, energy costs, water costs, stormwater fees, other utility costs, or operating ~~costs~~ costs, including environmental discharge fees, water and sewer maintenance fees, and increased meter accuracy, created from the implementation of one or more energy conservation measures when compared with an established baseline of previous ~~fuel costs, energy costs, or operating costs~~ costs, including captured lost revenues, developed by the governmental unit.

(2a) "Governmental unit" means either a local governmental unit or a State governmental unit.

(3) "Guaranteed energy savings contract" means a contract for the evaluation, recommendation, or implementation of energy conservation measures, including the design and installation of equipment or the repair or replacement of existing ~~equipment,~~equipment or meters, in which all payments, except obligations on termination of the contract before its expiration, are to be made over time, and in which energy savings are guaranteed to exceed costs.

(4) "Local governmental unit" means any board or governing body of a political subdivision of the State, including any board of a community college, any school board, or an agency, commission, or authority of a political subdivision of the State.

(5) "Qualified provider" means a person or business experienced in the design, implementation, and installation of energy conservation measures.

(6) "Request for proposals" means a negotiated procurement initiated by a governmental unit by way of a published notice that includes the following:
a. The name and address of the governmental unit.
b. The name, address, title, and telephone number of a contact person in the governmental unit.
c. Notice indicating that the governmental unit is requesting qualified providers to propose energy conservation measures through a guaranteed energy savings contract.
d. The date, time, and place where proposals must be received.
e. The evaluation criteria for assessing the proposals.
f. A statement reserving the right of the governmental unit to reject any or all the proposals.
g. Any other stipulations and clarifications the governmental unit may require.

(7) "State governmental unit" means the State or a department, an agency, a board, or a commission of the State, including the Board of Governors of The University of North Carolina and its constituent institutions."

SECTION 3. G.S. 143-64.17B(a) reads as rewritten:

"**§ 143-64.17B. Guaranteed energy savings contracts.**

(a) A governmental unit may enter into a guaranteed energy savings contract with a qualified provider if all of the following apply:

(1) The term of the contract does not exceed ~~12~~ 20 years from the date of the installation and acceptance by the governmental unit of the energy conservation measures provided for under the contract.

(2) The governmental unit finds that the energy savings resulting from the performance of the contract will equal or exceed the total cost of the contract.

(3) The energy conservation measures to be installed under the contract are for an existing ~~building.~~building or utility system."

SECTION 4. The catch line of G.S. 143-64.17G reads as rewritten:

"**§ 143-64.17G. Report on guaranteed energy savings ~~contracts.~~contracts entered into by local governmental units.**"

SECTION 5. The catch line of G.S. 143-64.17H reads as rewritten:

"**§ 143-64.17H. ~~Guaranteed~~ Report on guaranteed energy savings ~~contract reporting requirements.~~contracts entered into by State governmental units.**"

SECTION 6. G.S. 142-63 reads as rewritten:

"**§ 142-63. Authorization of financing contract.**

Subject to the terms and conditions set forth in this Article, a State governmental unit that has solicited a guaranteed energy conservation measure pursuant to G.S. 143-64.17A or G.S. 143-64.17B or the State Treasurer, as designated by the Council of State, is authorized to execute and deliver, for and on behalf of the State of

North Carolina, a financing contract to finance the costs of the energy conservation measure. The aggregate principal amount payable by the State under financing contracts entered pursuant to this Article shall not exceed ~~fifty million dollars ($50,000,000)~~ one hundred million dollars ($100,000,000) at any one time."

SECTION 7. G.S. 142-64(b)(2) reads as rewritten:

"(2) The Council of State has approved the execution and delivery of the financing contract by resolution that sets forth all of the following:

a. The not-to-exceed term or final maturity of the financing contract, which shall be no later than ~~12 years from the date the financing contract is entered.~~20 years from the date of acceptance of the project.

b. The not-to-exceed interest rate or rates (or the equivalent thereof), which may be fixed or vary over a period of time, with respect to the financing contract.

c. The appropriate officers of the State to execute and deliver the financing contract and all other documentation relating to it."

SECTION 8. G.S. 143-64.10 reads as rewritten:

"**§ 143-64.10. Findings; policy.**

(a) The General Assembly ~~hereby finds:~~finds all of the following:

(1) That the State shall take a leadership role in aggressively undertaking ~~energy~~ the conservation of energy, water, and other utilities in North ~~Carolina;~~Carolina.

(2) That State facilities have a significant impact on the State's consumption of ~~energy;~~energy, water, and other utilities.

(3) That ~~energy conservation~~ practices to conserve energy, water, and other utilities that are adopted for the design, construction, operation, maintenance, and renovation of these facilities and for the purchase, operation, and maintenance of equipment for these facilities will have a beneficial effect on the State's overall supply of ~~energy;~~energy, water, and other utilities.

(4) That the cost of the ~~energy~~ energy, water, and other utilities consumed by these facilities and the equipment for these facilities over the life of the facilities shall be considered, in addition to the initial ~~cost;~~cost.

(5) That the cost of ~~energy~~ energy, water, and other utilities is significant and facility designs shall take into consideration the total life-cycle cost, including the initial construction cost, and the cost, over the economic life of the facility, of the ~~energy~~ energy, water, and other utilities consumed, and of operation and maintenance of the facility as it affects ~~energy consumption; and~~ the consumption of energy, water, or other utilities.

(6) That State government shall undertake a program to reduce ~~energy~~ the use of energy, water, and other utilities in State facilities and equipment in those facilities in order to provide its citizens with an

example of ~~energy use~~energy-use, water-use, and utility-use efficiency.

(b) It is the policy of the State of North Carolina to ensure that ~~energy conservation~~ practices to conserve energy, water, and other utilities are employed in the design, construction, operation, maintenance, and renovation of State facilities and in the purchase, operation, and maintenance of equipment for State facilities."

SECTION 9. G.S. 143-64.11(2) reads as rewritten:

"(2) "Energy-consumption analysis" means the evaluation of all energy-consuming ~~systems~~systems, including systems that consume water or other utilities, and components of these systems by demand and type of ~~energy,~~energy or other utility use, including the internal energy load imposed on a facility by its occupants, equipment and components, and the external energy load imposed on the facility by climatic conditions."

SECTION 10. G.S. 143-64.11(2b) reads as rewritten:

"(2b) "Energy-consuming system" includes but is not limited to any of the following equipment or measures:

a. Equipment used to heat, cool, or ventilate the facility;
b. Equipment used to heat water in the facility;
c. Lighting systems;
d. On-site equipment used to generate electricity for the facility;
e. On-site equipment that uses the sun, wind, oil, natural gas, liquid propane gas, coal, or electricity as a power source; and
f. Energy conservation ~~measures~~ measures, as defined in G.S. 143-64.17, in the facility design and construction that decrease the ~~energy~~ energy, water, or other utility requirements of the facility."

SECTION 11. G.S. 143-64.11(3) reads as rewritten:

"(3) "Facility" means a building or a group of buildings served by a central ~~energy~~ distribution system for energy, water, or other utility or components of a central ~~energy~~ distribution system."

SECTION 12. G.S. 143-64.12 reads as rewritten:

"**§ 143-64.12. Authority and duties of State agencies.**

(a) The General Assembly authorizes and directs that State agencies shall carry out the construction and renovation of State facilities, under their jurisdiction in such a manner as to further the policy declared herein, ensuring the use of life-cycle cost analyses and ~~energy conservation practices.~~practices to conserve energy, water, and other utilities.

(b) The Department of Administration shall develop and implement policies, procedures, and standards to ensure that State purchasing practices improve ~~energy~~ efficiency regarding energy, water, and other utility use and take the cost of the product over the economic life of the product into consideration. The Department of Administration shall adopt and implement Building Energy Design Guidelines. These guidelines shall include energy-use goals and standards, economic assumptions for

life-cycle cost analysis, and other criteria on building systems and technologies. The Department of Administration shall modify the design criteria for construction and renovation of facilities to require that a life-cycle cost analysis be conducted pursuant to G.S. 143-64.15. The Department of Administration, as part of the Facilities Condition and Assessment Program, shall identify and recommend energy conservation maintenance and operating procedures that are designed to reduce energy consumption within the facility and that require no significant expenditure of funds. State departments, institutions, or agencies shall implement these recommendations. Where energy management equipment is proposed for State facilities, the maximum interchangeability and compatibility of equipment components shall be required.

The Department of Administration shall develop a comprehensive ~~energy management~~ program to manage energy, water, and other utility use for State government. Each State agency shall develop and implement ~~an energy~~ a management plan that is consistent with the State's comprehensive ~~energy management program.~~program to manage energy, water, and other utility use.

(c) through (g) Repealed by Session Laws 1993, c. 334, s. 4."

SECTION 13. G.S. 143-64.15 reads as rewritten:

"**§ 143-64.15. Life-cycle cost analysis.**

(a) A life-cycle cost analysis shall include, but not be limited to, all of the following elements:

(1) The coordination, orientation, and positioning of the facility on its physical ~~site;~~site.

(2) The amount and type of fenestration employed in the ~~facility;~~facility.

(3) Thermal characteristics of materials and the amount of insulation incorporated into the facility ~~design;~~design.

(4) The variable occupancy and operating conditions of the facility, including illumination ~~levels; and~~levels.

(5) Architectural features ~~which~~ that affect ~~energy consumption.~~the consumption of energy, water, and other utilities.

(b) The life-cycle cost analysis performed for any State facility shall, in addition to the requirements set forth in subsection (a) of this section, include, but not be limited to, all of the following:

(1) An energy-consumption analysis of the facility's energy-consuming systems in accordance with the provisions of subsection (g) of this ~~section;~~section.

(2) The initial estimated cost of each energy-consuming system being compared and ~~evaluated;~~evaluated.

(3) The estimated annual operating cost of all utility ~~requirements;~~requirements.

(4) The estimated annual cost of maintaining each energy-consuming ~~system; and~~system.

(5) The average estimated replacement cost for each system expressed in annual terms for the economic life of the facility.

(c) ~~The General Assembly requires each~~Each entity ~~to~~ shall conduct a life-cycle cost analysis pursuant to this section for the construction or the renovation of any State facility or State-assisted facility of 20,000 or more gross square feet. For the replacement of heating, ventilation, and air-conditioning equipment in any State facility or State-assisted facility of 20,000 or more gross square feet, the entity shall conduct a life-cycle cost analysis of the replacement equipment pursuant to this section when the replacement is financed under a guaranteed energy savings contract or financed using repair and renovation funds.

(d) The life-cycle cost analysis shall be certified by a registered professional engineer or bear the seal of a North Carolina registered architect, or both. The engineer or architect shall be particularly qualified by training and experience for the type of work involved, but shall not be employed directly or indirectly by a fuel provider, utility company, or group supported by fuel providers or utility funds. Plans and specifications for facilities involving public funds shall be designed in conformance with the provisions of G.S. 133-1.1.

(e) In order to protect the integrity of historic buildings, no provision of this Article shall be interpreted to require the implementation of ~~energy cost~~ measures to conserve energy, water, or other utility use that conflict with respect to any property eligible for, nominated to, or entered on the National Register of Historic Places, pursuant to the National Historic Preservation Act of 1966, P.L. 89-665; any historic building located within an historic district as provided in Chapters 160A or 153A of the General Statutes; any historic building listed, owned, or under the jurisdiction of an historic properties commission as provided in Chapter 160A or 153A; nor any historic property owned by the State or assisted by the State.

(f) Each State agency shall use the life-cycle cost analysis over the economic life of the facility in selecting the optimum system or combination of systems to be incorporated into the design of the facility.

(g) The energy-consumption analysis of the operation of energy-consuming systems utilities in a facility shall include, but not be limited ~~to:~~to, all of the following:

(1) The comparison of two or more system ~~alternatives;~~alternatives.

(2) The simulation or engineering evaluation of each system over the entire range of operation of the facility for a year's operating ~~period; and~~period.

(3) The engineering evaluation of the ~~energy~~ consumption of energy, water, and other utilities of component equipment in each system considering the operation of such components at other than full or rated outputs."

SECTION 14. This act is effective when it becomes law and applies to contracts entered into or renewed on or after that date.

SENATE BILL 402:
Water/Utilities Savings in Govt. Facilities

BILL ANALYSIS

Committee:	House Finance	**Date:**	July 10, 2006
Introduced by:	Sen. Kinnaird	**Summary by:**	Cindy Avrette
Version:	Second Edition		Committee Counsel

SUMMARY: Senate Bill 402 expands the use of installment finance contracts for guaranteed energy savings projects in three ways:

- ***It increases from $50 million to $100 million the amount of installment finance contracts the State may let to finance guaranteed energy savings measures.***
- ***It expands the types of energy savings upon which a guaranteed savings energy contract may be issued by either the State or local governmental units to include water and 'other utility' savings.***
- ***It increases the length of time an energy savings contract may be financed by either the State or local governmental units from 12 years to 20 years.***

The bill becomes effective when it becomes law. The bill received a favorable report from the House State Government Committee. The bill must be re-referred to House Appropriations.

CURRENT LAW: Local governments have had the authority to enter into financing contracts to finance the cost of energy conservation measures since 1994.[1] The General Assembly extended this ability to State agencies in 2002; the law limits the aggregate principal amount payable by the State under these contracts to $50 million.[2] An energy conservation measure is an alteration, training, or services that will provide anticipated energy savings with respect to a facility. The financing contracts are known as guaranteed energy savings contracts. Under the contract to implement energy conservation measures, all payments, except obligations on early termination, are to be made over time and energy cost savings are guaranteed to exceed the cost of the contract.

The law provides that a guaranteed energy savings contract is not a pledge of the government's taxing power. The debt is secured by a lien on or a security interest in any part of the property with respect to which an energy conservation measure is undertaken and/or the land upon which the property is or will be located. It is anticipated that the energy savings will generate enough money to pay the debt service on the contract.

The State Energy Office of the Department of Administration is required to adopt rules for agencies to follow in evaluating guaranteed energy savings contracts, subject to approval by the State Treasurer. State agencies that enter into guaranteed energy savings contracts are required to report to the State Energy Office which in turn reports annually to the Joint Legislative Commission on Governmental Operations. State energy conservation measures are subject to inspection and compliance by the State Construction Office or the local building inspector. The cost of the evaluation of the contract by either an independent architect or engineer, or by the State Construction Office, and the costs of the necessary building inspections, shall be included in the cost of the contract.

[1] GS 160A-20 and GS 143-64.17I.
[2] GS 143-64.17J and Article 8 of Chapter 142.

Before a guaranteed energy savings contract can be entered into, the Office of State Budget and Management must certify that resources are expected to be available to pay the amounts due under the contract. Next, the Council of State must approve the contract by resolution that sets out the maximum maturity, and the maximum interest rates. The maximum maturity may not exceed 12 years. The State Treasurer also must approve the financing, finding that the amount to be borrowed is adequate and not excessive and will not require an excessive increase in any State revenues to provide for repayment, and that the special indebtedness can be incurred or issued on terms favorable to the State.

BILL ANALYSIS: The 2nd edition of Senate Bill 420 does the following:

- It expands the definition of 'energy conservation measure' to include conservation measures that conserve not only energy, but also water or other utilities and it makes conforming changes in other statutes. (Sections 1, 2, 8, 9, 10, 11, 12, and 13) This change also expands the types of guaranteed energy savings contracts that may be entered by both units of local government and the State. (via GS 143-17I and GS 143-17J)
- It increases the aggregate principal amount payable by the State under guaranteed energy savings contracts from $50 million to $100 million.[3] (Section 6)
- It extends the maximum term for which an energy savings contract may be financed from 12 years to 20 years from the date of project acceptance.[4] (Sections 3 and 7)
- It provides that the State must conduct a life-cycle cost analysis of the replacement of heating, ventilation, and air conditioning equipment in a State facility of 20,000 or more gross square feet if the replacement is financed with a guaranteed energy savings contract or is financed using repair and renovation funds. (Section 13)
- It amends the catch-line of two statutes to make it clear which one applies to units of local governments and which one applies to State agencies. (Sections 4 and 5)

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

Kory Goldsmith, counsel to the House State Government Committee, substantially contributed to this summary.

S0402e2-SMRB

[3] The Senate version of SB 402 (1st edition) increased the amount fro $50 million to $75 million. House Bill 454, the companion bill passed by the House Finance Committee last year, also increased the amount from $50 million to $75 million.
[4] This provision is not in the 1st edition of SB 402. It was not included in HB 454 last session.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☒ House Committee Substitute for

SB 402 A BILL TO BE ENTITLED AN ACT TO CLARIFY THAT GUARANTEED ENERGY SAVINGS CONTRACTS INCLUDE CONSERVATION MEASURES FOR WATER AND OTHER UTILITIES, TO RAISE THE CAP FOR GUARANTEED ENERGY SAVINGS CONTRACTS, TO EXPAND THE STATE'S ENERGY POLICY AND LIFE-CYCLE COST ANALYSIS TO INCLUDE THE CONSERVATION OF WATER AND OTHER UTILITIES, AND TO MAKE CONFORMING CHANGES.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 2

SENATE BILL 2009*

Finance Committee Substitute Adopted 6/29/06

Short Title: Public-Private Partnerships for Schools. (Public)

Sponsors:

Referred to:

May 26, 2006

A BILL TO BE ENTITLED

AN ACT TO ALLOW CAPITAL LEASE FINANCING FOR PUBLIC SCHOOLS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 37 of Chapter 115C is amended by adding a new section to read:

"**§ 115C-531. Capital leases of school buildings and school facilities.**

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

(1) Capital lease. – A capital lease as defined by generally accepted accounting principles, regardless of how the parties describe the agreement.

(2) Private developer. – The entity with which the school board enters into a capital lease or build-to-suit lease under the provisions of this section.

(b) Authorization. – Local boards of education may enter into capital leases of real or personal property for use as school buildings or school facilities. The capital lease may relate to an existing building or a new school building to be constructed. The term of any capital lease, including any renewal periods, shall not exceed 40 years from the expected date that the local board of education will take occupancy of the property that is the subject of a capital lease. Subdivisions (c) and (d) of G.S. 115C-521 do not apply to a capital lease entered into under this section.

(c) Construction, Repairs, and Renovation. – The provisions of G.S. 115C-530(b) apply to a capital lease under this section. A capital lease entered into under this section may provide that the private developer is responsible for providing, or contracting for, construction, repair, or renovation work. Construction, repair, or renovation work undertaken or contracted by a private developer is not subject to the requirements of Article 8 of Chapter 143 of the General Statutes. Construction, repair, or renovation work undertaken or contracted by the private developer involving the estimated expenditure of three hundred thousand dollars ($300,000) or more is subject to the provisions of G.S. 115C-532.

(d) Nonsubstitution Clause. – A capital lease may not contain a nonsubstitution clause that restricts the right of a local board to continue to provide a service or activity or to replace or provide a substitute for any property financed or purchased by the capital lease.

(e) No Deficiency Judgment; No Pledge of Taxing Power. – No deficiency judgment may be rendered against any local board of education or any unit of local government, as defined in G.S. 160A-20(h), in any action for breach of a contractual obligation authorized by this section, and the taxing power of a unit is not and may not be pledged directly or indirectly to secure any moneys due under a contract authorized by this section. A capital lease shall state that it does not constitute a pledge of the taxing power or full faith and credit of the local board of education or board of county commissioners.

(f) Budgetary Accounting. – A capital lease entered into under this section shall be considered a continuing contract for capital outlay and is subject to G.S. 115C-441(c1); provided, however, notwithstanding any provision of G.S. 115C-441(c1) or G.S. 115C-426, in each fiscal year the appropriation of funds by the county for the payment of amounts due under the capital lease shall be at the discretion of the board of county commissioners.

(g) Local Government Commission Approval. – Capital leases entered into under this section are subject to approval by the Local Government Commission under Article 8 of Chapter 159 of the General Statutes if they meet the standards set out in G.S. 159-148(a)(1), 159-148(a)(2), and 159-148(a)(3). For purposes of determining whether the standards set out in G.S. 159-148(a)(3) have been met, only the five-hundred-thousand-dollar ($500,000) threshold applies.

(h) No Agreements on Student Assignment. – A capital lease may not contain any provision with respect to the assignment of specific students or students from a specific area to any specific school.

(i) Lien Laws Not Affected. – The provisions of Article 2 of Chapter 44A of the General Statutes apply to any real property, improvement to the real property, and rights that flow with the real property that is subject to a capital lease under this section. Real property that is subject to a capital lease under this section is subject to liens and foreclosure actions in the same manner and to the same extent as if the property were owned in fee simple by a private entity.

"**§ 115C-532. Additional provisions applicable to build-to-suit capital leases.**

(a) Definitions. – The definitions of G.S. 115C-531 apply in this section. In addition, for the purposes of this section, the following definitions apply:

(1) Build-to-suit capital lease. – A capital lease that provides for the construction of new facilities or the renovation of existing facilities by the private developer, the cost of which is estimated to be greater than three hundred thousand dollars ($300,000).

(2) Prime contractor. – A contractor who contracts directly with the private developer or the private developer's construction manager at risk, if any, for construction, repair, or renovation work under this section.

(b) Contract Provisions. – A build-to-suit capital lease may include contractual provisions by the private developer regarding the provision of products, services, and guaranties related to a facility that is the subject of a capital lease. A local board of education may also enter into a separate agreement or series of related agreements regarding the provision of products, services, and guaranties related to a facility that is the subject of a capital lease; provided all agreements are approved by the board of county commissioners in connection with the approval of the build-to-suit capital lease.

(c) Approval by Local Board of Education. – Before entering into a build-to-suit capital lease pursuant to this section, the local board of education shall adopt a resolution as provided in this subsection. Before adopting the resolution required by this subsection, the local board of education shall publish a notice of its intent to enter into a build-to-suit capital lease at least 10 days in advance of the date of the meeting at which the action is contemplated and in a newspaper having general circulation within the geographic area served by the local board of education. The notice shall include, at a minimum, the date, time, and place of the meeting, a description in brief and general terms of the subject of the lease, the name of the other party to the lease, and an indication of the board's intent to take action to authorize the lease at the indicated meeting. The resolution shall provide the following:

(1) That entering into the build-to-suit capital lease for one or more specified buildings or facilities is in the unit's best interests under all the circumstances. In making this evaluation, the local board of education may consider the time, cost, and quality of design, engineering, and construction, including the time required to begin and the time required to complete a particular activity; occupancy costs, including lease payments, life-cycle maintenance, repair, and energy costs; and any other factors the board deems relevant.

(2) That the private developer is qualified to provide, either alone or in conjunction with other identified and associated persons, the products and services called for under the proposed capital lease and any related agreements. The local board of education shall make this determination taking into account any factors the local board deems relevant, including the knowledge, skill, and reputation of the provider and its associated persons, the goals and plans of providers for utilization of minority business enterprises, and the costs to be incurred by the local board of education.

(d) Additional Requirements Regarding Design Services. – Required design and engineering services shall be performed by an engineer, to the extent permitted under G.S. 83A-13(b), or a licensed architect. Specifications for any new school building shall be consistent with the requirements of G.S. 143-128(a). All applicable requirements for the review or approval of design and specifications for school buildings by the Department of Public Instruction and the Department of Insurance apply to school buildings constructed, repaired, or renovated under a capital lease authorized under this section.

(e) Additional Requirements Regarding Construction Services. – A private developer is required to seek competition and minority business participation in connection with all construction work under this section in accordance with the following provisions:

(1) A private developer shall either (i) solicit bids from prime contractors for all construction work under this section or (ii) select a construction manager at risk through a qualification based process in which case the selected construction manager at risk shall solicit bids from all of its prime contractors for all construction work under this section.

(2) The private developer or its construction manager at risk may prequalify contractors. The prequalification criteria, if any, shall be determined by the local board of education and the private developer to address quality, performance, the time specified in the bids for performance of the contract, the cost of construction oversight, time for completion, capacity to perform, and other factors deemed appropriate by the private developer and the local board of education.

(3) A private developer and its construction manager at risk, if any, shall comply with the requirements applicable to a public entity pursuant to G.S. 143-128.2, and prime contractors shall comply with the provisions of G.S. 143-128.2 applicable to contractors, except the private developer and its construction manager shall adopt the local board of education's minority participation goal. The local board of education shall require the private developer to submit its plan for compliance with G.S. 143-128.2 for approval by the local board of education prior to the private developer soliciting bids under this subsection.

(4) A private developer or its construction manager at risk shall publicly advertise at least 30 days in advance of the bid date in a newspaper having general circulation within the geographic areas served by the local board of education, shall open bids publicly, and shall award each contract to the lowest responsible, responsive, and prequalified bidder, taking into consideration quality, performance, the time specified in the bids for performance of the contract, the cost of construction oversight, time for completion, compliance with G.S. 143-128.2, and any other factors deemed appropriate by the private developer and the local board of education and included in the bid solicitation. A private developer or its construction manager at risk shall enter into the construction contracts directly with the successful bidder. After the award of a contract or contracts, the private developer or its construction manager at risk and any contractor may negotiate and reach agreement with the successful bidder on modifications to all aspects of the contract, including the time for performance, the scope of the work, and the price to be paid.

(5) The local board of education, in its discretion, may require the private developer to provide a performance and payment bond for construction work in accordance with the provisions of Article 3 of Chapter 44A of the General Statutes and may require the private developer to provide a bond or other appropriate guarantee to cover any other guarantees, products, or services to be provided by the private developer.

(f) Predevelopment Agreements with Private Developer Authorized. – Local boards of education may enter into predevelopment agreements with a private developer in advance of entering into a build-to-suit capital lease. Predevelopment agreements with private developers shall be approved by the board of county commissioners. Predevelopment agreements may include provisions for each of the following:

(1) Site selection, land acquisition, and site preparation, including such services as wetlands delineation, archaeological review, and State and local government land-use permitting.

(2) Building programming and design, including both architectural and engineering services pursuant to subsection (d) of this section.

(g) Real Estate Transfer Authorized. – Notwithstanding any contrary provisions of law, a city, county, or local board of education may, pursuant to the procedures in G.S. 160A-267, sell, lease, or otherwise transfer real or personal property to any private developer for construction, repair, or renovation of a school facility under a build-to-suit capital lease entered into pursuant to this section. The conveying unit may subject the property to any covenants, conditions, or restrictions as the unit deems to be necessary to carry out the purposes of this section. The disposition of property pursuant to this subsection is not subject to the requirements of G.S. 115C-518. No transfer by a local board of education under this subsection shall occur unless it is approved by the board of county commissioners.

(h) Additional Permitted Lease Terms. – In recognition of the potential economic and technical utility of build-to-suit capital leases, which include in their scope combinations of design, construction, operation, management, and maintenance responsibilities over prolonged periods of time, and the potential desirability of a single point of responsibility for these matters in connection with build-to-suit capital leases, any build-to-suit capital lease may include provisions imposing responsibility on the private developer or any identified affiliated entity for any of the following matters:

(1) Site selection, land acquisition, and site preparation, including wetlands delineation, archaeological review, and State and local government land-use permitting.

(2) Facility programming, planning, and design, including both architectural and engineering services.

(3) Qualification and prequalification of contractors and subcontractors.

(4) Construction and construction management.

(5) Financing.

(6) Facility maintenance and repairs.

(7) Energy usage guarantees.

(8) Transfer of ownership of the leased property to a local government entity at the end of the lease term.

(9) Any other guaranties, products, and services as the local board of education may determine.

(i) Letter of Credit. – A private developer shall provide an irrevocable letter of credit for the benefit of laborers and materialmen in an amount not less than five percent (5%) of the total cost of the improvements which are the subject of the build-to-suit capital lease and shall maintain the letter of credit throughout the construction of the project and for the succeeding six-month period."

SECTION 2. G.S. 143-129(e) is amended by adding a new subdivision to read:

"(e) Exceptions. – The requirements of this Article do not apply to:

...

(12) Build-to-suit capital leases with a private developer under G.S. 115C-532."

SECTION 3. This act is effective when it becomes law and is repealed effective July 1, 2011.

SENATE BILL 2009:
Public-Private Partnerships for Schools

BILL ANALYSIS

Committee:	Senate Finance	**Date:**	June 30, 2006
Introduced by:	Sen. Malone	**Summary by:**	Y. Canaan Huie
Version:	Second Edition		Committee Counsel

SUMMARY: By allowing for capital leases of school facilities, this bill would make significant changes relating to school construction in North Carolina. The bill would be effective when it became law and would be repealed effective July 1, 2011.

CURRENT LAW: Under current North Carolina law, local school administrative units are responsible for providing for adequate public school facilities. Local governments have several options for financing the provision of public school facilities. Local governments may finance the provision of school facilities through direct appropriations for construction, through the issuance of special indebtedness or general obligation indebtedness (provided that the general obligation indebtedness is approved by a voter referendum), and through the use of operating leases. Currently, local school administrative units are not allowed to enter into capital leases with respect to school facilities.

Capital leases differ from operating leases in several respects. In general, a capital lease is one that is considered to have the economic characteristics of ownership. To determine whether a lease is a capital lease or an operating lease, one must look at a number of different provisions in the lease. Under generally accepted accounting principles, a capital lease is a non-cancelable contract satisfying one or more of the following conditions:

- Legal title to the property is transferred to the lessee.
- The lease contains bargain or nominal purchase options.
- The lease term equals or exceeds 75% of the asset's useful life.
- The present value of the minimum lease payments equals or exceeds 90% of the asset's fair market value.

BILL ANALYSIS: The bill would allow local school administrative units to enter into capital leases for school facilities and to allow for those leases to contain an agreement relating to construction, repairs, or renovations. In doing so, the bill contains two exceptions to general existing law. Under current North Carolina law, no local board of education may contract for the erection of a school facility unless the property on which the building is to be located is owned in fee simple by the local unit. In addition, under current law, all construction and repairs must be under the control and direction of the local board of education. This bill would clarify that when the building is the subject of a capital lease, the board is not required to own the property and the lease may provide that the lessor is responsible for repairs and renovations.

All capital leases would be subject to the following limitations:

- The lease could not contain a clause that restricts the right of the local board to continue to provide a service or activity or to replace or provide a substitute for any property financed or purchased by a capital lease.
- Each capital lease would be required to contain a clause specifying that it did not constitute a pledge of the taxing power or full faith and credit of the of the local board of education or

board of county commissioners. This provision clarifies that a capital lease is not a general obligation of the local unit. Further, the bill provides that no deficiency judgment could be rendered against a local board of education or other local government unit under the lease.

- A capital lease would be considered a continuing capital outlay and would be subject to the provisions of G.S. 115C-441(c1). That provision generally allows a local board of education to enter into a contract for continuing capital outlay provided that the budget resolution includes an appropriation for the current fiscal year, an unencumbered balance remains in the appropriation sufficient to pay in the current fiscal year the sums authorized under the contract, and the contracts are approved by the board of county commissioners in a resolution that binds the board to appropriate sufficient sums in later fiscal years. For capital leases, however, the resolution by the board of county commissioners would require only that the board make appropriations in later years in their discretion.
- A capital lease would be subject to approval by the Local Government Commission to the extent that the lease satisfied one or more of the conditions relating to financing agreements requiring approval by the LGC. These conditions are a) the agreement extends for at least 5 years, b) the agreement obligates the unit to pay sums of money to another, regardless of whether the other is a payee, or the agreement obligates the unit to payments of over $500,000.
- A capital lease could not contain any agreement with respect to student assignment.
- The property subject to a capital lease would be subject to the provisions of Article 2 of Chapter 44A of the General Statutes. That Article is the general law dealing with liens of laborers, mechanics, and materialmen with respect to real property.

In addition to the general provisions listed above, numerous additional provisions would apply to a "build-to-suit capital lease." A build-to-suit capital lease would be defined as a lease that provided for construction or renovation the cost of which was estimated to exceed $300,000. The following provisions would apply to build-to-suit capital leases.

- Before entering into a build-to-suit capital lease, the local board of education would be required to adopt a resolution approving the lease. The board would be required to provide at least 10 days' notice of the meeting at which the board planned to adopt the resolution approving the lease. The notice would be required to include a brief description of the lease and the name of the other party to the lease. The resolution adopted by the board must include a finding that the capital lease was in the best interests of the unit and that the private developer (the lessor) was qualified to provide the products and services called for under the lease.
- All required design and engineering services would be required to be performed by a qualified person and would be required to be in compliance with general requirements related to construction of school facilities.
- Private developers would be required to seek competition and minority business participation in connection with the construction work. The private developer would be required to conduct a competitive bidding process which could include prequalification of subcontractors. The private developer would be required to comply with general law regarding minority business participation in public projects, but would be required to adopt the minority business participation goals of the local board of education. The local board of

education would be required to approve of the private developer's plan for compliance with minority business participation prior to the private developer seeking bids.

- The board of education could require the private developer to provide performance or payment bonds in accordance with the provisions of Article 3 of Chapter 44A of the General Statutes. That Article provides for model provisions for performance bonds related to public construction contracts.
- A local board of education could enter into a predevelopment agreement with a private developer. Predevelopment agreements would be required to be approved by the board of county commissioners and may involve such areas as site selection or building design.
- A local government unit would be authorized to sell, lease, or other transfer real property to a private developer for construction, repair, or renovation of a school facility under a capital lease without following general procedures related to the disposition of property.
- Each capital lease would require that the private developer provide an irrevocable letter of credit of not less than 5% of the total costs of the improvements for the benefit of laborers and materialmen.

EFFECTIVE DATE: This bill would be effective when it became law and would be repealed effective July 1, 2011.

S2009e2-SMLY

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☒Committee Substitute for

SB 2009 A BILL TO BE ENTITLED AN ACT TO ALLOW CAPITAL LEASE FINANCING FOR PUBLIC SCHOOLS.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 1666

Short Title:	Sunset Beach/Sewage Collection System.	(Local)
Sponsors:	Senator Soles.	
Referred to:	State and Local Government.	

May 18, 2006

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE TOWN OF SUNSET BEACH TO LEVY SPECIAL ASSESSMENTS TO MEET THE COST OF CONSTRUCTING SEWAGE COLLECTION AND TREATMENT FACILITIES PRIOR TO THE CONSTRUCTION OF THE FACILITIES.

Whereas, the Town of Sunset Beach is without sewage collection and treatment facilities and the health and safety of the Town require their construction; and

Whereas, the Town does not have the funds needed to build the facilities; and

Whereas, the Town has determined that the only way to construct the facilities in a proper and timely manner is to require that property owners meet their special assessment obligations prior to the letting of contracts for the construction; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. The Town Council of the Town of Sunset Beach may levy special assessments to meet the estimated cost of sewage collection and treatment facilities. The assessment roll shall become effective on a date set by the Council that is at least 30 days following the formal advertising for bids covering the proposed work.

SECTION 2. The Town Council of the Town of Sunset Beach may give owners of assessed property the option of paying the assessment either in cash or in installments, but the period over which the installments are paid shall not exceed one year from the date the assessment roll is confirmed. Any portion of an assessment that is not paid within 30 days after publication of the notice that the assessment roll has been confirmed shall bear interest until paid at a rate to be fixed in the assessment resolution but not more than eight percent (8%) per annum.

SECTION 3. In the event the execution of a contract (or contracts) covering the proposed work is not forthcoming within one year from the date the assessment roll is confirmed, all assessments for the purpose of meeting the cost of constructing sewage collection and treatment facilities paid to the Town of Sunset Beach shall be returned to each payee within 30 days along with interest at a rate not less than six percent (6%) per

annum for the period each assessment payment is held by the Town; however, interest shall be paid on no assessment funds for a period in excess of 90 days.

SECTION 4. All assessment funds received by the Town may be deposited in a special interest-bearing account, and any interest earned and retained by the Town shall be used to offset expenses incurred with regard to the proposed sewage collection and treatment facilities.

SECTION 5. In levying the special assessments, the Town Council shall follow, insofar as practicable, the procedures set forth in Article 10 of Chapter 160A of the General Statutes.

SECTION 6. When the construction of the sewage collection and treatment facilities is complete, the Town Council shall ascertain the total cost as provided in G.S. 160A-226. If the total cost is greater than the estimated cost, the Town Council may levy special assessments to collect the difference on the same basis as the first special assessments were made. The provisions of Section 2 of this act shall apply to the paying of special assessments levied under this section.

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

SENATE BILL 1666:
Sunset Beach/Sewage Collection System

BILL ANALYSIS

Committee:	House Finance	**Date:**	July 10, 2006
Introduced by:	Sen. Soles	**Summary by:**	Martha Walston
Version:	First Edition		Committee Counsel

SUMMARY: Senate Bill 1666 is a local bill that authorizes the Town of Sunset Beach to levy special assessments for sewage collection and treatment facilities. The bill was given a favorable report in Senate State and Local Government and House Local Government I.

CURRENT LAW: G.S. 160A-312 authorizes cities to acquire, construct, establish, enlarge, improve, maintain, own, operate, and contract for the operation of a public enterprise, which includes wastewater collection, treatment, and disposal systems of all types. Cities are also authorized to establish a schedule of rates and fees for the use of the services furnished by any public enterprise. Under this authority, only actual users of the particular service may be charged fees for its use. Alternatively, a city may require payment of a periodic availability charge. Under either option, the fees must reflect the cost of the service and could not include capital costs.

BILL ANALYSIS: The bill authorizes the Town Council of Sunset Beach to levy a special assessment to meet estimated costs of construction for sewage collection and treatment facilities. The bill includes provisions that:

- Give owners of assessed property the option of either cash or installment payments. Payment must be made within 30 days of publication of the assessment roll, or the owner must pay additional interest at a rate of not more than 8%.
- Provide for return of money with interest if contracts are not executed within one year from the date the assessment roll is confirmed, with interest of not less than 6%. However, interest will not be paid on assessment funds for a period in excess of 90 days.
- Allow the Town to deposit funds into a special interest bearing account, with the interest used to offset expenses of the proposed sewage collection and treatment facilities.
- Requires the Town Council to follow, insofar as practicable, the statutory procedures for special assessments. These procedures include the town council's adoption of a preliminary resolution setting out the details of the proposed project, a public hearing on the preliminary resolution, the adoption of an assessment resolution, the filing of the preliminary assessment roll in the city clerk's office, and public hearing on the preliminary assessment roll.
- Allow the Town to levy additional special assessments if actual costs of construction exceed the estimated costs.

EFFECTIVE DATE: Effective when it becomes law.

BACKGROUND: Similar legislation was ratified for Oak Island on June 30, 2006 (House bill 2658).

R Erika Churchill, counsel to House Local Government I, substantially contributed to this summary.

S1666e1-SMLA

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☐ Committee Substitute for

SB 1666 A BILL TO BE ENTITLED AN ACT AUTHORIZING THE TOWN OF SUNSET BEACH TO LEVY SPECIAL ASSESSMENTS TO MEET THE COST OF CONSTRUCTING SEWAGE COLLECTION AND TREATMENT FACILITIES PRIOR TO THE CONSTRUCTION OF THE FACILITIES.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 3

SENATE BILL 948

Agriculture/Environment/Natural Resources Committee Substitute Adopted 8/9/05
Finance Committee Substitute Adopted 6/1/06

Short Title: Amend Boating Safety/Vessel Titling Law. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS AMENDMENTS TO THE BOATING SAFETY AND VESSEL TITLING LAW.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 75A of the General Statutes reads as rewritten:

"Article 1.

"Boating Safety Act.

"§ 75A-1. Declaration of policy.

It is the policy of this State to promote safety for persons and property in and connected with the use, operation, and equipment of vessels, and to promote uniformity of laws relating thereto.

"§ 75A-2. Definitions.

As used in this Chapter, unless the context clearly requires a different meaning:

(1) "Abandoned vessel" means a vessel that has been relinquished, left, or given up by the lawful owner without the intention to later resume any right or interest in the vessel. The term does not include a vessel that is left by an owner or agent of the owner with any person or business for the purpose of storage, maintenance, or repair and that is not subsequently reclaimed.

(1a) "Certificate of number" means the document and permanent identification number issued by the Wildlife Resources Commission for the purpose of registering a vessel in this State.

(1b) "Commission" means the Wildlife Resources Commission.

(1c) "Director" means the Executive Director of the Wildlife Resources Commission.

(1d) "Electric generating facility" means any plant facilities and equipment used for the purposes of producing, generating, transmitting, delivering, or furnishing electricity for the production of power.

~~(1)~~(1e) "Motorboat" means any vessel equipped with propulsion machinery of any type, whether or not ~~such~~ the machinery is the principal source of propulsion: Provided, that "propulsion machinery" as used in this section shall not include an electric motor when used as the only means of mechanical propulsion of any ~~vessel: Provided further, that the term "motorboat" shall not include a vessel which has a valid marine document issued by the Bureau of Customs of the United States government or any federal agency successor thereto.~~vessel.

(1f) "No-wake speed" means idle speed or slow speed creating no appreciable wake.

(2) "Operate" means to navigate or otherwise use or occupy ~~a~~ any motorboat or ~~vessel, and shall be applicable to any motorboat or~~ vessel that is afloat.

(3) "Owner" means a person, other than a lienholder, having the property in or title to a vessel. The term includes a person entitled to the use or possession of a vessel subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security.

(4) "Person" means an individual, partnership, firm, corporation, association, or other entity.

(4a) "Underway" means a vessel that is not at anchor, or made fast to the shore, or aground.

(5) "Vessel" means every description of watercraft or structure, other than a seaplane on the water, used or capable of being used as a means of transportation or habitation on the water.

(6) "Waters of this State" means any waters within the territorial limits of this State, and the marginal sea adjacent to this State and the high seas when navigated as a part of a journey or ride to or from the shore of this State, but does not include private ponds as defined in G.S. 113-129.

~~(7) "Electric generating facility" means any plant facilities and equipment for the purposes of producing, generating, transmitting, delivering or furnishing electricity for the production of power.~~

"§ 75A-3. Wildlife Resources Commission to administer Chapter; ~~Motorboat~~ Vessel Committee; funds for administration.

(a) ~~It shall be the duty and responsibility of the North Carolina Wildlife Resources~~ The Commission ~~to~~ shall enforce and administer the provisions of this Chapter.

(b) The ~~chairman~~ chair of the ~~Wildlife Resources~~ Commission shall designate from among the members of the ~~Wildlife Resources~~ Commission three members who

shall serve as the ~~Motorboat~~ Vessel Committee of the ~~Wildlife Resources~~ Commission, and who shall, in their activities with the Commission, place special emphasis on the administration and enforcement of this Chapter.

(c) The Boating Account is established within the Wildlife Resources Fund created under G.S. 143-250. All moneys collected pursuant to the numbering and titling provisions of this Chapter shall be credited to this Account. ~~Gasoline~~ Motor fuel excise tax revenue is credited to the Account under G.S. 105-449.126. ~~Revenue in the Account shall be used by the Wildlife Resources~~ The Commission shall use revenue in the Account, subject to the Executive Budget Act and the Personnel Act, for the administration and enforcement of this Chapter; for activities relating to boating and water safety including education and waterway marking and improvement; and for boating access area acquisition, development, and maintenance. ~~At~~ The Commission shall use at least three dollars ($3.00) of each one-year ~~vessel registration~~ certificate of number fee and at least nine dollars ($9.00) of each three-year ~~vessel registration~~ certificate of number fee collected under the numbering provisions of G.S. 75A-5 ~~shall be used~~ for boating access area acquisition, development, and maintenance.

"§ 75A-4. Identification numbers required.

Every vessel on the waters of this State shall be numbered, except those vessels exempted from numbering under G.S. 75A-7. No person shall operate or give permission for the operation of any vessel on ~~such~~ the waters ~~unless the~~ of this State unless all of the following conditions are met:

(1) The vessel is numbered in accordance with this Chapter, or in accordance with applicable federal law, or in accordance with a federally approved numbering system of another ~~state, and unless~~ state.

(2)~~(1)~~ The certificate of number awarded to ~~such~~ the vessel is in full force and ~~effect, and~~ effect.

(3)~~(2)~~ The ~~identifying~~ identification number set forth in the certificate of number is displayed on each side of the bow of ~~such~~ the vessel.

"§ 75A-5. Application for ~~numbers; fee; displaying;~~ certificate of number and fees; reciprocity; change of ownership; ~~loss of certificate; presumption from possession of certificate;~~ conformity with ~~United States~~ federal regulations; ~~award of certificates;~~ records; award of certificates; renewal of certificates; transfer of ~~interest, abandonment, etc.;~~ partial interest; destroyed or junked vessels; abandonment; change of address; ~~unauthorized numbers.~~ duplicate certificates; display.

(a) Application for Certificate of Number and Fees. – The owner of each vessel requiring numbering by this State shall file an application for a certificate of number with the ~~Wildlife Resources Commission on forms approved by it.~~ Commission. The Commission shall furnish application forms and shall prescribe the information contained in the application form. The application shall be signed by the owner of the ~~vessel, or his agent,~~ vessel or the owner's agent and shall be accompanied by a fee of ten dollars ($10.00) for a one-year period or by a fee of twenty-five dollars ($25.00) for a three-year period; provided, however, there shall be no fee charged for vessels owned and operated by nonprofit rescue squads if they are operated exclusively for rescue

purposes, including rescue training. The ~~applicant~~ owner shall have the option of selecting a one-year numbering period or a three-year numbering period. Upon receipt of the application in approved form, the Commission shall ~~have the same entered upon the records of its office~~enter the application in its records and issue ~~to~~ the ~~applicant~~ owner a certificate of number stating the identification number awarded to the vessel and the name and address of the owner, and a validation decal indicating the expiration date of the certificate of number. The owner shall paint on or attach to each side of the bow of the vessel the identification number in such manner as may be prescribed by rules of the Commission in order that it may be clearly visible. The identification number shall be maintained in legible condition. The validation decal shall be displayed on the starboard bow of the vessel immediately following the number. The certificate of number shall be pocket size and shall be available ~~at all times~~ for inspection on the vessel for which ~~issued, whenever such~~ the certificate is issued at all times the vessel is in operation. ~~Provided, however, any~~Any person charged with failing to so carry ~~such~~ a certificate of number shall not be convicted if ~~he~~ the person produces in court a certificate of number ~~theretofore~~ previously issued to ~~him~~ the owner that was ~~and~~ valid at the time of ~~his arrest.~~ the alleged violation.

(b) Reciprocity. – The owner of any vessel already covered by a number in full force and effect ~~which has been awarded to it~~ pursuant to ~~then operative~~ federal law or a federally approved numbering system of another state shall record the identification number prior to operating the vessel on the waters of this State in excess of the 90-day reciprocity period provided for in G.S. 75A-7(a)(1). ~~Such~~ The recordation shall be ~~in the manner and pursuant to the procedure required for the award of a number under~~made pursuant to subsection (a) of this section, except that no additional or substitute identification number shall be issued.

(c) Change of Ownership. – Should the ownership of a vessel change, a new application form with a fee of ten dollars ($10.00) for a one-year period or by a fee of twenty-five dollars ($25.00) for a three-year period shall be filed with the ~~Wildlife Resources~~ Commission and a new certificate bearing the same identification number shall be awarded to the new owner in the same manner as ~~provided for in~~ an original ~~award~~ certificate of number. ~~In case a certificate should become lost, a new certificate bearing the same number shall be issued upon payment of a fee of two dollars ($2.00).~~ Possession of the certificate shall in cases involving prosecution for violation of any provision of this Chapter be prima facie evidence that the person whose name appears ~~therein~~ on the certificate is the owner of the ~~boat~~ vessel referred to ~~therein.~~ on the certificate.

(d) Conformity With Federal Regulations. – In the event that an agency of the ~~United States~~ federal government shall have in force an over-all system of identification numbering for vessels within the United States, the numbering system employed pursuant to this Chapter by the ~~Wildlife Resources~~ Commission shall be in conformity therewith.

~~(e) The Wildlife Resources Commission may issue any vessel transaction pursuant to the provisions of Article 1 or 4 of this Chapter directly or may authorize any person qualified as prescribed in subsection (l) of this section to act as agent for the~~

~~issuance of vessel transactions subject to the requirements set forth in this Chapter. Upon acceptance of this authorization, an agent's actions in issuing any vessel transaction pursuant to this Chapter shall be valid as if issued directly by the Commission. As compensation for services rendered to the Commission and to the general public, the agent shall receive the following specified commission from the statutory fee for each listed transaction:~~

~~(1) Renewal of vessel registration – $1.25.~~

~~(2) Transfer of ownership and registration of a vessel – $3.00.~~

~~(3) Issuance of new certificate of vessel number and registration – $3.00.~~

~~(4) Issuance of duplicate vessel registration – $0.50.~~

~~(5) Issuance, transfer, duplication, or lien recordation of vessel title – $3.00.~~

~~It is a Class 1 misdemeanor for any such agent to charge or accept any additional fee, remuneration, or other thing of value for such services.~~

(f) Records. – All records of the ~~Wildlife Resources~~ Commission made or kept pursuant to this section shall be public records.

(g) Award of Certificates. – Each certificate of number awarded pursuant to this Chapter, unless sooner terminated or discontinued in accordance with the provisions of this Chapter, shall continue in full force and effect to and including the last day of the ~~same~~ month during which the ~~same~~ certificate was awarded after the lapse of one year in the case of a one-year certificate or three years in the case of a three-year certificate. ~~In addition to the year of expiration, the validation decal required by subsection (a) of this section shall indicate the last month during which the certificate is valid.~~ No person shall willfully remove a validation decal from any vessel during the continuance of its validity or alter, counterfeit, or otherwise tamper with a validation decal attached to any vessel for the purpose of changing or obscuring the indicated date of expiration of the certificate of number of ~~such~~ the vessel.

(h) Renewal of Certificates. – ~~Each~~ An owner of a vessel awarded a certificate of number ~~awarded~~ pursuant to this Chapter ~~must be renewed~~ shall renew the certificate on or before the first day of the month ~~next succeeding that during~~ after which the ~~same~~ certificate expires; otherwise, ~~such~~ the certificate shall lapse and be void until such time as it may thereafter be renewed. Application for renewal shall be submitted on a form approved by the ~~Wildlife Resources~~ Commission and shall be accompanied by a fee of ten dollars ($10.00) for a one-year period or by a fee of twenty-five dollars ($25.00) for a three-year period; provided, there shall be no fee required for a period of one year for renewal of certificates of number ~~which~~ that have been previously issued to commercial fishing vessels as defined in G.S. 75A-5.1, upon compliance with all of the requirements of that section.

(i) Transfer of Partial Interest. – The owner shall furnish the ~~Wildlife Resources~~ Commission notice of the transfer of ~~all or~~ any part of ~~his~~ the owner's interest other than the creation of a security interest in a vessel numbered in this State pursuant to subsections (a) and (b) of this section ~~or of the destruction or abandonment of such vessel,~~ within 15 days ~~thereof. Such transfer, destruction, or abandonment shall terminate the certificate of number for such vessel except that, in the case of a transfer~~

~~of a part interest which does~~ of the transfer. A transfer of partial interest in a vessel shall not affect the owner's right to operate ~~such~~ the vessel, nor shall a ~~such~~ transfer of partial interest in a vessel ~~shall not~~ terminate the certificate of number.

(i1) Destroyed or Junked Vessels. – The owner of any destroyed or junked vessel shall furnish the Commission notice of the destruction or junking of that vessel within 15 days of its occurrence. Destruction or junking terminates the certificate of number and renders the hull identification number invalid for that vessel.

(i2) Abandonment. – A person may acquire ownership of an abandoned vessel by providing proof to the Commission that the lawful owner has actually abandoned the vessel. The Commission shall adopt rules by which a person seeking to acquire ownership may demonstrate that the vessel is actually abandoned. At a minimum, the rules shall provide for a reasonable attempt to locate the lawful owner and, if the owner is located, notice by the claimant of an intention to claim ownership of the vessel.

(j) ~~Any holder of a certificate of number shall notify the Wildlife Resources Commission within 15 days if his address no longer conforms to the address appearing on the certificate, and shall, as a part of such notification, furnish the Commission his new address. The Commission may provide in its rules and regulations for the surrender of the certificate bearing the former address and its replacement with a certificate bearing the new address or for the alteration of an outstanding certificate to show the new address of the holder.~~Change of Address. – Whenever any person, after applying for or obtaining the certificate of number of a vessel, moves from the address shown in the application or upon the certificate of number, that person shall notify the Commission of the change of address within 30 days of moving in a form acceptable to the Commission.

(j1) Duplicate Certificates. – The Commission shall issue a duplicate certificate of number for a vessel upon application by the person entitled to hold the certificate, if the Commission is satisfied that the original certificate of number has been lost, stolen, mutilated, or destroyed, or has become illegible. The Commission shall charge a fee of five dollars ($5.00) for issuance of each duplicate certificate.

(k) Display. – No number other than the identification number ~~awarded to a vessel~~ set forth in the certificate of number or granted reciprocity pursuant to this Chapter shall be painted, attached, or otherwise displayed on either side of the bow of ~~such~~ a vessel, except the validation decal required by subsection (a) of this section.

~~(l) When certificates of number are to be issued by agents as provided by subsection (e) of this section, the Wildlife Resources Commission may establish administrative guidelines that prescribe:~~

~~(1) The qualifications of agents;~~

~~(2) The duties of agents;~~

~~(3) Methods and procedures to ensure accountability and security for proceeds and unissued certificates of number;~~

~~(4) Requirements for security bonds in amounts sufficient to protect the State against loss of public funds or documents;~~

~~(5) Methods and procedures, including submission of the kinds and amounts of evidence deemed sufficient to relieve an agent of~~

~~responsibility for losses due to occurrences beyond the agent's control; and~~

~~(6) Any other reasonable requirement or condition deemed necessary and desirable to expedite and control the issuance of certificates of boat number by agents.~~

~~In accordance with administrative guidelines developed pursuant to this section, the executive director may:~~

~~(1) Select and appoint agents in the areas most convenient to the boating public and limit the number of agents in any one area if necessary for efficiency of operation;~~

~~(2) Require prompt and accurate reporting and remittance of public funds or documents by agents;~~

~~(3) Conduct periodic and special audits of accounts;~~

~~(4) Terminate the authorization of any agent found to be in noncompliance with administrative guidelines or directives of the Commission or when State funds or property are reasonably believed to be in jeopardy; and~~

~~(5) Demand the immediate surrender of all accounts, forms, certificates, decals, records, and State funds and property in the event of the termination of an agency.~~

~~A person who is denied the authority to act as an agent for the issuance of certificates of number and validation decals or whose authority to do so is revoked may not commence a contested case under G.S. 150B-23. If any check or draft of any agent for the issuance of certificates of boat number shall be returned by the banking facility upon which the same is drawn for lack of funds, such agent shall be liable to the Wildlife Resources Commission for a penalty of five percent (5%) of the amount of such check or draft, but in no event shall such penalty be less than five dollars ($5.00) or more than two hundred dollars ($200.00). Agents shall be assessed a penalty of twenty-five percent (25%) of their issuing fee on all remittances to the Commission after the fifteenth day of the month immediately following the month of sale.~~

"§ 75A-5.1. Commercial fishing vessels; renewal of identification number.

(a) The owner of any commercial fishing vessel that is registered under the provisions of G.S. 113-168.6 may renew the certificate of number of the vessel free of charge for a one-year period when the owner has complied with all of the conditions of this section.

(b) As used in this section, "commercial fishing vessel" is a vessel used in a commercial fishing operation, as defined in G.S. 113-168.

(c) In order to be entitled to renewal of certificate of number under the provisions of this section, the owner of the vessel shall ~~submit, and the Wildlife Resources Commission shall require:~~submit both of the following to the Commission:

(1) The regular application for renewal of the certificate of number of the vessel, as provided by G.S. ~~75A-5; and~~75A-5.

(2) ~~A statement, on a form to be supplied by the Commission, and signed by the applicant, that the vessel for which the application for renewal~~

~~is made is a commercial fishing vessel; and~~Satisfactory proof that the vessel owner possesses a valid commercial fishing vessel registration.

~~(3) A receipt, signed by an authorized agent of the Department of Environment and Natural Resources, and bearing the number awarded to the boat under the provisions of this Chapter, showing that the commercial fishing vessel registration fee imposed by G.S. 113-168.6 has been paid for the vessel for the period during which the application for renewal of the certificate of number is submitted.~~

(d) Any person who ~~shall~~ willfully ~~give~~ gives false information upon ~~the~~ an application or ~~the~~ statement required by this section or who ~~shall falsify~~falsifies any ~~registration~~ certificate of number fee receipt required by this section ~~shall be~~is guilty of a Class 1 misdemeanor.

"**§ 75A-5.2. Vessel agents.**

(a) In order to facilitate the convenience of the public, the efficiency of administration, the need to keep statistics and records affecting the conservation of wildlife resources, boating, water safety, and other matters within the jurisdiction of the Commission, and to facilitate vessel transactions, the Commission may conduct vessel transactions through any of the following:

(1) Vessel agents.
(2) The Commission's headquarters.
(3) Employees of the Commission.
(4) Two or more of those sources simultaneously.

(b) When there are substantial reasons for differing treatment, the Commission may conduct vessel transactions by one method in one locality and by another method in another locality.

(c) As compensation for services rendered to the Commission and to the general public, vessel agents shall receive the following specified commission from the statutory fee for each listed transaction:

(1) Renewal of certificate of number – $1.25.
(2) Transfer of ownership and certificate of number – $3.00.
(3) Issuance of new certificate of number – $3.00.
(4) Issuance of duplicate certificate of number – $0.50.
(5) Issuance or transfer of certificate of title – $3.00.

(d) When certificates of number are to be issued by vessel agents as provided by subsection (a) of this section, the Commission may adopt rules to provide for any of the following:

(1) Qualifications of the vessel agents.
(2) Duties of the vessel agents.
(3) Methods and procedures to ensure accountability and security for proceeds and unissued certificates of number.
(4) Types and amounts of evidence that a vessel agent must submit to relieve the agent of responsibility for losses due to occurrences beyond the control of the agent.

(5) Any other reasonable requirement or condition that the Commission deems necessary to expedite and control the issuance of certificates of number by vessel agents.

(e) The Commission may adopt rules to authorize the Director to take any of the following actions related to vessel agents:

(1) Select and appoint vessel agents in the areas most convenient to the boating public.

(2) Limit the number of vessel agents in any one area if necessary for efficiency of operation.

(3) Require prompt and accurate reporting and remittance of public funds or documents by vessel agents.

(4) Conduct periodic and special audits of accounts.

(5) Suspend or terminate the authorization of any vessel agent found to be noncompliant with rules adopted by the Commission or when State funds or property are reasonably believed to be in jeopardy.

(6) Require the immediate surrender of all equipment, forms, supplies, records, and State funds and property issued by or belonging to the Commission, in the event of the termination of a license agent.

(f) The Commission is exempt from the contested case provisions of Chapter 150B of the General Statutes with respect to determinations of whether to authorize or terminate the authority of a person to conduct vessel transactions as a vessel agent of the Commission.

(g) If any check or bank account draft of any vessel agent for the issuance of certificates of number shall be returned by the banking facility upon which the same is drawn for lack of funds, the vessel agent shall be liable to the Commission for a penalty of five percent (5%) of the amount of the check or bank account draft, but in no event shall the penalty be less than five dollars ($5.00) or more than two hundred dollars ($200.00). Vessel agents shall be assessed a penalty of twenty-five percent (25%) of their issuing fee on all remittances to the Commission after the fifteenth day of the month immediately following the month of sale.

(h) It is a Class 1 misdemeanor for a vessel agent to do any of the following:

(1) Withhold or misappropriate funds generated from vessel transactions.

(2) Falsify records of vessel transactions.

(3) Willfully and knowingly assist or allow a person to obtain a certificate of number or certificate of title for which the person is ineligible.

(4) Willfully issue a backdated certificate of number or certificate of title.

(5) Willfully include false information or omit material information on vessel transaction forms and records regarding either:

a. A person's entitlement to a particular certificate of number or certificate of title.

b. The applicability or term of a particular certificate of number.

(6) Charge or accept any fee, remuneration, or other item of value that exceeds the fee amounts provided by statute.

(7) Charge or accept any additional fee, remuneration, or other item of value in association with any activity set out in subdivisions (1) through (5) of this subsection.

"§ 75A-6. Classification; rules.

(a) ~~Motorboats~~ Vessels subject to the provisions of this Chapter shall be divided into ~~four classes~~ five categories as follows:

(1) Class A. Less than 16 feet in length.

(2) Class 1. Sixteen feet or over and less than 26 feet in length.

(3) Class 2. Twenty-six feet or over and less than 40 feet in length.

(4) Class 3. Forty feet or ~~over.~~over and not more than 65 feet in length.

(5) Class 4. More than 65 feet in length.

(b) through (e) Repealed by Session Laws 1993, c. 361, s. 2.

~~(f) Every motorboat shall carry at least one life preserver, or life belt, or ring buoy, or other device of the sort prescribed by the regulations of the Wildlife Resources Commission for each person on board, so placed as to be readily accessible: Provided, that every motorboat carrying passengers for hire shall carry so placed as to be readily accessible at least one life preserver of the sort prescribed by the regulations of the Commission for each person on board.~~

~~(g) Every motorboat shall be provided with such number, size, and type of fire extinguishers, capable of promptly and effectually extinguishing burning gasoline, as may be prescribed by the regulations of the Wildlife Resources Commission, which fire extinguishers shall be at all times kept in condition for immediate and effective use and shall be so placed as to be readily accessible.~~

~~(h) The provisions of subsection (g) of this section shall not apply to motorboats while competing in any race conducted pursuant to G.S. 75A-14 or, if such boats be designed and intended solely for racing, while engaged in such navigation as is incidental to the tuning up of the boats and engines for the race.~~

~~(i) Every motorboat shall have the carburetor or carburetors of every engine therein (except outboard motors) using gasoline as fuel, equipped with such efficient flame arrestor, backfire trap, or other similar device as may be prescribed by the regulations of the Wildlife Resources Commission.~~

~~(j) Every such motorboat and every such vessel, except open boats, using as fuel any liquid of a volatile nature, shall be provided with such means as may be prescribed by the regulations of the Wildlife Resources Commission properly and efficiently ventilating the bilges of the engine and fuel tank compartments so as to remove any explosive or inflammable gases.~~

(k) Repealed by Session Laws 1993, c. 361, s. 2.

(l) No person shall operate or give permission for the operation of a vessel ~~which~~ that is not equipped as required by this ~~section or modification thereof.~~section.

(m) ~~In the event that any of the regulations of subsections (a), (f), (g), (h), (i), (j), and (l) of this section are in conflict with the equipment regulations of the Federal Boat Safety Act of 1971 and the federal regulations adopted pursuant thereto, the Wildlife Resources~~ The Commission ~~is hereby granted the authority to~~ may adopt ~~such~~

~~regulations as are necessary~~rules to conform ~~with~~ to the Federal Boat Safety Act of 1971 and the federal regulations adopted pursuant thereto.

(n) All ~~boats~~ vessels propelled by machinery of 10 hp or ~~less, which~~less that are operated on the public waters of this ~~State,~~State shall carry at least one ~~life preserver,~~ ~~or~~personal flotation device, life belt, ~~or~~ ring buoy, or other device of the sort prescribed by ~~the regulations~~rules of the ~~Wildlife Resources~~ Commission for each person on board, and from one-half hour after sunset to one-half hour before sunrise shall carry a white light in the stern or shall have on board a hand flashlight in good working condition, which light shall be ready at hand and shall be temporarily displayed in sufficient time to prevent collision.

(o) The Commission for Health Services shall adopt rules establishing standards for ~~the approval of~~ sewage treatment devices and holding tanks for marine toilets installed in ~~boats~~ vessels operating on the inland fishing waters of the State as designated by the ~~Wildlife Resources~~ Commission and the inland lake waters of the State. ~~No~~ The Commission shall not issue a certificate of number for any vessel operating on the inland fishing waters of the State as designated by the ~~Wildlife Resources~~ Commission and the inland lake waters of this State that is equipped with a marine toilet ~~shall be registered by the Wildlife Resources Commission~~ unless ~~such~~ the vessel is provided with a sewage treatment device or holding tank approved by the Commission for Health Services. All vessels operating on the inland fishing waters of the State as designated by the ~~Wildlife Resources~~ Commission and the inland lake waters of the State that are equipped with a marine toilet shall ~~be required to~~ provide a sewage treatment device or holding tank approved by the Commission for Health Services. ~~The~~ Wildlife protectors ~~of the Wildlife Resources Commission shall~~ may inspect vessels on the inland fishing waters of the State as designated by the ~~Wildlife Resources~~ Commission and the inland lake waters to determine if approved treatment devices or holding tanks are properly installed and if they are operating in a satisfactory manner. A vessel registered, ~~documented~~ documented, or otherwise licensed in another state and equipped with a marine toilet not prohibited in such state may be operated on the inland fishing waters of the State as designated by the ~~Wildlife Resources~~ Commission, without regard to the provisions of this subsection while making an interstate trip.

"§ 75A-6.1. Navigation rules.

(a) Every vessel operated on the waters of this State that is required to obtain an identification number pursuant to this ~~Chapter or~~ Chapter, has a valid marine document issued by the federal Bureau of Customs or any federal agency successor to it, or issued pursuant to a federally approved numbering system of another state shall comply with the navigation rules, including requirements for navigational lights, sound-signaling devices, and other equipment, contained in the Inland Navigational Rules Act of 1980, codified as amended at 33 U.S.C. §§ 2001-2038, 2071-2073 (1993) and rules adopted pursuant thereto, see 33 C.F.R. Part 84 (1992).

(b) The ~~Wildlife Resources~~ Commission is responsible for the enforcement of the rules specified in subsection (a) of this section. The rules specified in subsection (a) of

this section are also enforceable by all peace officers with general subject matter jurisdiction.

(c) Violation of the navigation rules specified in subsection (a) of this section shall constitute a Class 3 misdemeanor and is punishable only by a fine not to exceed one hundred dollars ($100.00).

"§ 75A-7. Exemption from numbering requirements.

(a) A vessel shall not be required to be numbered under this Chapter if it is:

(1) A vessel ~~which~~ that is required to be awarded ~~a~~ an identification number pursuant to federal law or a federally approved numbering system of another state, and for which ~~a~~ an identification number has been so awarded: Provided, that any such ~~boat~~ vessel shall not have been within this State for a period in excess of 90 consecutive days.

(2) A vessel from a country other than the United States temporarily using the waters of this State.

(3) A vessel whose owner is the United States, a state or a subdivision thereof.

(4) A ship's lifeboat.

(5) A vessel ~~which~~ that has a valid marine document issued by the federal Bureau of Customs ~~of the United States government~~ or any federal agency successor thereto.

(6) A sailboat of not more than 14 feet on the load water line (LWL).

(7) A vessel with no means of propulsion other than drifting or manual paddling, poling, or rowing.

(b) The ~~Wildlife Resources~~ Commission is hereby empowered to permit the voluntary numbering of vessels owned by the United States, a state or a subdivision thereof.

(c) Those vessels owned by the United States, a state or a subdivision thereof and those owned by nonprofit rescue squads may be assigned a certificate of number bearing no expiration date but which shall be stamped with the word "permanent" and shall not be renewable so long as the vessel remains the property of the governmental entity or nonprofit rescue squad. If the ownership of any such ~~boat~~ vessel is transferred from one governmental entity to another or to a nonprofit rescue squad or if a ~~boat~~ vessel owned by a nonprofit rescue squad is transferred to another nonprofit rescue squad or governmental entity, the Commission shall issue a new permanent ~~certificate may be issued~~ certificate of number, displaying the same identification number, without charge to the successor entity. When any such ~~boat~~ vessel is sold to a private owner or is otherwise transferred to private ownership, the applicable certificate of number shall be deemed to have expired immediately prior to ~~such~~ the transfer. Prior to further use on the waters of this State, the new owner shall obtain ~~either a temporary certificate of number or a regular~~ a certificate of number pursuant to the provisions of this Chapter. The provisions of this subsection applicable to ~~motorboats~~ a vessel owned by a nonprofit rescue ~~squads~~ squad apply only to ~~those~~ a vessel operated exclusively for rescue purposes, including rescue training.

"§ 75A-8. ~~Boat~~ Vessel liveries.

~~It shall be unlawful for the~~An owner of a ~~boat~~vessel livery ~~to~~ shall not rent a vessel to any person unless the provisions of this Chapter have been complied with. ~~It shall be the duty of owners~~An owner of ~~boat liveries to~~ a vessel livery shall equip all vessels rented as required by this Chapter.

"§ 75A-9. Muffling devices.

(a) ~~The exhaust of every~~Every internal combustion engine used on ~~any motorboat~~ a vessel shall ~~be effectively muffled by~~ have effective muffling equipment ~~so constructed~~ installed and used on the exhaust to muffle the noise ~~of the exhaust~~ in a reasonable manner. The use of cutouts is ~~prohibited, except for motorboats competing in a regatta or boat race approved as provided in G.S. 75A-14, and for such while on trial runs, during a period not to exceed 48 hours immediately preceding such regatta or race and for such motorboats while competing in official trials for speed records during a period not to exceed 48 hours immediately following such regatta or race.~~prohibited.

(b) Every internal combustion engine with an open-air exhaust that is used on a vessel that has a capacity of operating at more than 4,000 revolutions per minute shall have effective muffling equipment installed and used on each exhaust manifold stack. This subsection shall not apply to a licensed commercial fishing vessel.

(c) This section shall not apply to vessels competing in a regatta or race approved by the United States Coast Guard, for such vessels while on trial runs during a period not to exceed 48 hours immediately preceding the regatta or race, and for such vessels while competing in official trials for speed records during a period not to exceed 48 hours immediately following the regatta or race.

~~**"§ 75A-9.1. Muffling devices - Motorboats.**~~

~~Every internal combustion engine with an open-air exhaust which is used on any motorboat and which has a capacity of operating at more than 4000 revolutions per minute shall have effective muffling equipment installed on each exhaust manifold stack except for motorboats competing in a regatta or boat race approved as provided in G.S. 75A-14, and for such motorboats while on trial runs, during a period not to exceed 48 hours immediately preceding such regatta or race and for such motorboats while competing in official trials for speed records during a period not to exceed 48 hours immediately following such regatta or race. This Article shall not apply to licensed commercial fishing boats.~~

"§ 75A-10. Operating ~~boat~~ vessel or manipulating water skis, etc., in reckless manner; operating, etc., while intoxicated, etc.; depositing or discharging litter, etc.

(a) No person shall operate any motorboat or vessel, or manipulate any water skis, surfboard, or similar device on the waters of this State in a reckless or negligent manner so as to endanger the life, limb, or property of any person.

(b) No person shall manipulate any water skis, surfboard, nonmotorized vessel, or similar device on the waters of this State while under the influence of an impairing substance.

(b1) No person shall operate any ~~motorboat or motor~~ vessel while underway on the waters of this State:

(1) While under the influence of an impairing substance, or

(2) After having consumed sufficient alcohol that ~~he~~ the person has, at any relevant time after the boating, an alcohol concentration of 0.08 or more.

(b2) The fact that a person charged with violating this subsection is or has been legally entitled to use alcohol or a drug is not a defense to a charge under ~~this subsection or subsection (b) above.~~ subsections (b) and (b1) of this section. The relevant definitions contained in G.S. 20-4.01 shall apply to ~~this subsection and subsection (b) above.~~ subsections (b), (b1), and (b2) of this section.

(b3) A person who violates a provision of subsection (a), (b), or (b1) of this section is guilty of a Class 2 misdemeanor.

(c) No person shall place, throw, deposit, or discharge or cause to be placed, thrown, deposited, or discharged on the waters of this State or into the inland lake waters of this State, any litter, raw sewage, bottles, cans, papers, or other liquid or solid materials which render the waters unsightly, noxious, or otherwise unwholesome so as to be detrimental to the public health or welfare or to the enjoyment and safety of the water for recreational purposes.

(d) No person shall place, throw, deposit, or discharge or cause to be placed, thrown, deposited, or discharged on the waters of this State or into the inland lake waters of this State any medical waste as defined by G.S. 130A-290 which renders the waters unsightly, noxious, or otherwise unwholesome so as to be detrimental to the public health or welfare or to the enjoyment and safety of the water for recreational purposes.

(e) A person who willfully violates subsection (d) of this section is guilty of a Class 1 misdemeanor. A person who willfully violates subsection (d) of this section and in so doing releases medical waste that creates a substantial risk of physical injury to any person who is not a participant in the offense is guilty of a Class F felony which may include a fine not to exceed fifty thousand dollars ($50,000) per day of violation.

"§ 75A-10.1. Family purpose doctrine applicable.

The family purpose doctrine, as applicable in this State to tort cases arising from the operation of motor vehicles, shall apply to tort cases arising from the operation of motorboats and vessels as those terms are defined in this Chapter.

"§ 75A-10.2. Proof of ownership of ~~motorboat.~~ vessel.

(a) In all actions to recover damages for injury to the person or to property or for the death of a person, arising out of an accident or collision involving ~~motorboats or vessels as said terms are described in G.S. 75A-2,~~ a vessel, proof of ownership of such ~~motorboat or~~ vessel at the time of ~~such~~ the accident or collision shall be prima facie evidence that ~~said motorboat or~~ the vessel was being operated and used with the authority, consent and knowledge of the owner in the very transaction out of which ~~said~~ the injury or cause of action arose.

(b) Proof of the certificate of number stating the identification number awarded to the ~~motorboat or~~ vessel in the name of any person, ~~firm~~ firm, or corporation as required by this Chapter, or proof of the licensing, registration, or documentation of ~~said motorboat or~~ the vessel as required by other state or federal law in the name of any person, ~~firm~~ firm, or corporation, shall for the purpose of any such action, be prima

facie evidence of ownership and that ~~said motorboat or~~ the vessel was then being operated by and under the control of a person for whose conduct the owner was legally responsible, for the owner's benefit, and within the course and scope of ~~his~~ the operator's employment.

"**§ 75A-11. Duty of operator involved in collision, ~~accident or other casualty.~~accident, casualty, or other occurrence.**

(a) ~~It shall be the duty of the~~For the purposes of this section, the term 'occurrence' means a collision, accident, casualty, or other similar occurrence involving a vessel. The operator of a vessel involved in ~~a collision, accident, or other casualty,~~ an occurrence, so far as ~~he can~~the operator is able to do so without serious danger to ~~his own~~the operator's vessel, crew, and passengers (if any), ~~to~~ shall render persons affected by the ~~collision, accident, or other casualty such~~ occurrence any assistance as may be practicable and ~~as may be~~ necessary in order to save them from or minimize any danger caused by the ~~collision, accident, or other casualty,~~occurrence, and also to give ~~his~~ the operator's name, ~~address~~ address, and identification of ~~his~~ the operator's vessel in writing to any person injured and to the owner of any property damaged in the ~~collision, accident, or other casualty.~~occurrence.

(b) ~~In the case of collision, accident, or other casualty involving a vessel, the operator thereof, if the collision, accident, or other casualty~~If an occurrence results in ~~death~~ the death, injury, or disappearance indicating death or injury, ~~or injury to~~ of a person or damage to ~~property in excess of five hundred dollars ($500.00), shall, within 10 days,~~ a vessel or other property of two thousand dollars ($2,000) or more, or if there is complete loss of any vessel, the operator of the vessel shall file with the ~~Wildlife Resources~~ Commission a full description of the ~~collision, accident, or other casualty,~~ occurrence, including ~~such~~ any information ~~as said~~ the agency may, by ~~regulation,~~rule, require. If an occurrence results in death, disappearance, or injury, the operator of the vessel shall file the report with the Commission within 48 hours of the occurrence. If the occurrence results in vessel or property damage, or complete loss of any vessel, the operator of the vessel shall file the report with the Commission within 10 days of the occurrence. When the operator of the vessel cannot submit the report, the owner of the vessel shall submit the report. ~~Such report~~Reports filed pursuant to this subsection shall not be admissible as evidence.

(c) When, as a result of an occurrence that involves a vessel or its equipment, a person dies or disappears from a vessel, the operator of the vessel shall, without delay and by the most expeditious means available, notify the nearest law enforcement agency of all of the following:

(1) The date, time, and exact location of the occurrence.

(2) The name of each person who died or disappeared.

(3) The certificate of number and name of the vessel.

(4) The name and address of the vessel owner or owners and the vessel operator.

(d) If the operator of the vessel cannot give notice required by this section, each person on board the vessel shall notify the law enforcement agency or determine that notice has been given. Upon receiving notice under this section, a law enforcement

agency shall immediately provide the Commission and the United States Coast Guard with the information required by this section.

"§ 75A-12. Furnishing information to agency of United States.

In accordance with any request duly made by an authorized official or agency of the United States, any information compiled or otherwise available to the ~~Wildlife Resources~~ Commission pursuant to G.S. 75A-11(b) shall be transmitted to ~~said~~ the requesting official or agency of the United States.

"§ 75A-13. Water skis, surfboards, etc.

(a) No person shall operate a vessel on any water of this State for towing a person or persons on water skis, ~~or~~ a surfboard, or similar device ~~unless there~~unless at least one of the following conditions is met:

(1) There is in ~~such a~~the vessel a person, in addition to the operator, in a position to observe the progress of the person or persons being ~~towed or unless the skiers~~towed.

(2) The persons being towed wear a ~~life preserver or unless the boat~~ personal flotation device.

(3) The vessel is equipped with a rear view mirror.

(b) No person shall operate a vessel on any water of this State towing a person or persons on water skis, a surfboard, or similar device, nor shall any person engage in water skiing, surfboarding, or similar activity at any time between the hours from one hour after sunset to one hour before sunrise.

(c) The provisions of subsections (a) and (b) of this section do not apply to a performer engaged in a professional ~~exhibition or a person or persons engaged in an activity authorized under G.S. 75A-14.~~exhibition.

(d) No person shall operate or manipulate any vessel, tow rope, or other device by which the direction or location of water skis, a surfboard, or similar device may be affected or controlled in such a way as to cause the water skis, surfboard, or similar device, or any person thereon to collide with any object or person.

"§ 75A-13.1. Skin and scuba divers.

(a) No person shall engage in skin diving or scuba diving in the waters of this State ~~which~~ that are open to boating, or assist in such diving, without displaying a diver's flag from a mast, buoy, or other structure at the place of diving; and no person shall display such flag except when diving operations are under way or in preparation.

(b) The diver's flag shall be square, not less than 12 inches on a side, and shall be of red background with a diagonal white stripe, of a width equal to one fifth of the flag's height, running from the upper corner adjacent to the mast downward to the opposite outside corner.

(c) No operator of a vessel under way in the waters of this State shall permit ~~such~~ the vessel to approach closer than 50 feet to any structure from which a diver's flag is then being displayed, except where ~~such~~ the flag is so positioned as to constitute an unreasonable obstruction to navigation; and no person shall engage in skin diving or scuba diving or display a diver's flag in any locality ~~at which the same~~ that will unreasonably obstruct vessels from making legitimate navigational use of the water.

(d) A person who violates a provision of this section is guilty of a Class 3 misdemeanor and shall only be subject to a fine not to exceed twenty-five dollars ($25.00).

"§ 75A-13.2: Repealed by Session Laws 1999-447, s. 3.

"§ 75A-13.3. Personal watercraft.

(a) No person shall operate a personal watercraft on the waters of this State at any time between sunset and sunrise. For purposes of this section, "personal watercraft" means a small vessel ~~which~~ that uses an outboard or propeller-driven motor, or an inboard motor powering a water jet pump, as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on, or being towed behind the vessel, rather than in the conventional manner of sitting or standing inside the vessel.

(a1) No person shall operate a personal watercraft on the waters of this State at greater than no-wake speed within 100 feet of an anchored or moored vessel, a dock, pier, swim float, marked swimming area, swimmers, surfers, persons engaged in angling, or any manually operated propelled vessel, unless the personal watercraft is operating in a narrow channel. No person shall operate a personal watercraft in a narrow channel at greater than no-wake speed within 50 feet of an anchored or moored vessel, a dock, pier, swim float, marked swimming area, swimmers, surfers, persons engaged in angling, or any manually operated propelled vessel.

(b) Except as otherwise provided in this subsection, no person under 16 years of age shall operate a personal watercraft on the waters of this State, and it is unlawful for the owner of a personal watercraft or a person who has temporary or permanent responsibility for a person under the age of 16 to knowingly allow that person to operate a personal watercraft. A person of at least 14 years of age but under 16 years of age may operate a personal watercraft on the waters of this State if:

(1) The person is accompanied by a person of at least 18 years of age who physically occupies the watercraft; or

(2) The person (i) possesses on his or her person while operating the watercraft, identification showing proof of age and a ~~boater~~ boating safety certification card issued by the ~~Wildlife Resources~~ Commission or proof of other satisfactory completion of a boating safety education course approved by the National Association of State Boating Law Administrators (NASBLA); and (ii) produces that identification and certification card upon the request of an officer of the ~~Wildlife Resources~~ Commission or local law enforcement agency.

(b1) A person under 16 years of age who operates a personal watercraft in violation of the provisions of subsection (b) of this section is guilty of an infraction as provided in G.S. 14-3.1.

(c) No livery shall lease, hire, or rent a personal watercraft to or for operation by a person under 16 years of age, except as provided in subsection (b) of this section.

(c1) ~~It shall be unlawful for any~~No person, firm, or corporation ~~to~~ shall engage in the business of renting personal watercraft to the public for operation by the rentee unless ~~such~~ the person, firm, or corporation has secured insurance for ~~his own~~ the

liability of the person, firm, or corporation and that of ~~his~~ the rentee, in such an amount as is hereinafter provided, from an insurance company duly authorized to sell liability insurance in this State. Each ~~such~~ personal watercraft rented must be covered by a policy of liability insurance insuring the owner and rentee and their agents and employees while in the performance of their duties against loss from any liability imposed by law for damages including damages for care and loss of services because of bodily injury to or death of any person and injury to or destruction of property caused by accident arising out of the operation of such personal watercraft, subject to the following minimum limits: three hundred thousand dollars ($300,000) per occurrence.

(c2) A vessel livery that fails to carry liability insurance in violation of subsection (c1) of this section is guilty of a Class 2 misdemeanor and shall only be subject to a fine not to exceed one thousand dollars ($1,000).

(d) No person shall operate a personal watercraft on the waters of this State, nor shall the owner of a personal watercraft knowingly allow another person to operate that personal watercraft on the waters of this State, unless:

(1) Each person riding on or being towed behind ~~such~~ the vessel is wearing a type I, type II, type III, or type V personal flotation device approved by the United States Coast Guard. Inflatable personal flotation devices do not satisfy this requirement; and

(2) In the case of a personal watercraft equipped by the manufacturer with a lanyard-type engine cut-off switch, the lanyard is securely attached to the person, clothing, or flotation device of the operator at all times while the personal watercraft is being operated in such a manner to turn off the engine if the operator dismounts while the watercraft is in operation.

(d1) No person shall operate a personal watercraft towing another person on water ~~skis~~ skis, a surfboard, or ~~other devices~~similar device unless:

(1) The personal watercraft has on board, in addition to the operator, an observer who shall monitor the progress of the person or persons being towed, or the personal watercraft is equipped with a rearview mirror; and

(2) The total number of persons operating, observing, and being towed does not exceed the number of passengers identified by the manufacturer as the maximum safe load for the vessel.

(e) A personal watercraft must at all times be operated in a reasonable and prudent manner. Maneuvers that endanger life, limb, or property shall constitute reckless operation of a vessel as provided in G.S. 75A-10, and ~~include:~~include any of the following:

(1) Unreasonably or unnecessarily weaving through congested vessel ~~traffic;~~traffic.

(2) Jumping the wake of another vessel within 100 feet of ~~such~~ the other vessel or when visibility around ~~such~~ the other vessel is ~~obstructed;~~obstructed.

(3) Intentionally approaching another vessel in order to swerve at the last possible moment to avoid ~~collision;~~collision.

(4) Repealed by Session Laws 2000-52, s. 2.

(5) Operating contrary to the "rules of the road" or following too closely to another vessel, including another personal watercraft. For purposes of this subdivision, "following too closely" means proceeding in the same direction and operating at a speed in excess of 10 miles per hour when approaching within 100 feet to the rear or 50 feet to the side of another vessel that is underway unless that vessel is operating in a narrow channel, in which case a personal watercraft may operate at the speed and flow of other vessel traffic.

(f) The provisions of this section do not apply to a performer engaged in a professional exhibition, a person or persons engaged in an activity authorized under G.S. 75A-14, or a person attempting to rescue another person who is in danger of losing life or limb.

(f1) For purposes of this section, "narrow channel" means a segment of the waters of the State 300 feet or less in width.

(g) Repealed by Session Laws 1999-447, s. 1.

(h) Nothing in this section prohibits units of local government, marine commissions, or local lake authorities from regulating personal watercraft pursuant to the provisions of G.S. 160A-176.2 or any other law authorizing such regulation, provided that the regulations are more restrictive than the provisions of this section or regulate aspects of personal watercraft operation that are not covered by this section. Whenever a unit of local government, marine commission, or local lake authority regulates personal watercraft pursuant to this subsection, it shall conspicuously post signs that are reasonably calculated to provide notice to personal watercraft users of the stricter regulations.

"§ 75A-14: Repealed by Session Laws 1999-248, s. 4.

"§ 75A-14.1. Lake Norman No-Wake Zone.

It is unlawful to operate a vessel at greater than no-wake speed within 50 yards of a ~~boat~~ vessel launching area, bridge, dock, pier, marina, ~~boat~~ vessel storage structure, or ~~boat~~ vessel service area on the waters of Lake Norman. ~~No-wake speed is idle speed or slow speed creating no appreciable wake.~~

"§ 75A-15. Rules on water safety; adoption of the ~~Uniform Waterway Marking~~United States Aids to Navigation System.

(a) In accordance with subsection (b) of this section, the ~~Wildlife Resources~~ Commission is empowered to ~~make~~ adopt rules, for the local water in question, as to:

(1) Operation of vessels, including restrictions concerning speed zones, and type of activity conducted.

(2) Promotion of boating and water safety generally by occupants of vessels, swimmers, fishermen, and others using the water.

(3) Placement and maintenance of navigation aids and markers, in conformity with governing provisions of law.

Prior to ~~making~~ the adoption of any rules, the Commission shall investigate the water recreation and safety needs of the local water in question. In ~~making such~~ conducting the investigation, the Commission in its discretion may hold public hearings on the rules proposed and the general needs of the local water in question. After ~~such~~ completion of the investigation and application of standards, the Commission may in its discretion ~~pass~~ adopt the rules requested, ~~pass~~ adopt them in an amended form, or refuse to ~~pass~~ adopt them. After ~~passage,~~adoption, the Commission may amend or repeal the rules after first holding a public hearing.

(b) Any subdivision of this State may, but only after public notice, make formal application to the ~~Wildlife Resources~~ Commission for rules on waters within the subdivision's territorial limits as to the matters listed in subsection (a) of this section. The ~~Wildlife Resources~~ Commission ~~may,~~may adopt rules applicable to local areas of water defined by the Commission that are found to be heavily used for water recreation purposes by persons from other areas of the State and as to which there is not coordinated local interest in regulation.

(b1) The ~~Wildlife Resources~~ Commission may adopt rules ~~prohibiting~~ to prohibit entry of vessels into public swimming areas and ~~establishing~~ to establish speed zones at public ~~boat~~ vessel launching ramps, marinas, or ~~boat~~ vessel service areas and on other congested water areas where there are demonstrated water safety hazards. Enforcement of ~~such rules~~ rules adopted pursuant to this subsection shall be dependent upon placement and maintenance of regulatory markers in accordance with the ~~Uniform State Waterway Marking~~United States Aids to Navigation System by ~~such agency~~the Commission or ~~agencies as may be~~an agency designated by the ~~Wildlife Resources~~ Commission.

(c) The ~~Uniform State Waterway Marking System as approved by the Advisory Panel of State Officials to the Merchant Marine Council, United States Coast Guard, in October 1961~~United States Aids to Navigation System, as established by 33 Code of Federal Regulations Part 62 (1 July 2005 edition), is hereby adopted for use on the waters of North Carolina. The ~~Wildlife Resources~~ Commission is authorized to ~~pass~~ adopt rules implementing the marking system and may:

(1) Modify provisions as necessary to meet the special water recreational and safety needs of this State, provided that ~~such~~ the modifications do not depart in any essential manner from the uniform standards being adopted in other states.

(2) Modify provisions as necessary to conform with amendments to the marking system that may be proposed for adoption by the states.

(3) Enact supplementary standards regarding design, construction, placement, and maintenance of markers.

(4) Enact clarifying rules as to matters not covered with precision in the ~~report of the Advisory Panel of State Officials.~~United States Aids to Navigation System.

(5) Enact implementing rules as to matters left to State discretion in the ~~report of the Advisory Panel of State Officials.~~United States Aids to Navigation System.

(6) Enact rules forbidding or restricting the placement of markers either throughout the State or in certain classes or areas of waters without prior permission having been obtained from the Commission or some agency or official designated by the Commission.

(c1) It is unlawful to place or maintain any marker of the sort covered by the marking system in the waters of North Carolina that does not conform to or is in violation of the marking system and the implementing rules of the Commission.

(d) Rules enacted under the authority of subsections ~~(a)~~(a), (b), and ~~(b)~~(b1) of this section shall supersede all local rules in conflict or incompatible with such rules. As used in this subsection, "local rules" shall include provisions relating to boating, water safety, or other recreational use of local waters in special local, or private acts, in ordinances or rules of local governing bodies, or in ordinances or rules of local water authorities. Except as may be authorized in subsections ~~(a)~~(a), (b), and ~~(b)~~(b1) of this section, no local rules may be made respecting the ~~Uniform Waterway Marking~~ United States Aids to Navigation System and its implementation or respecting supplemental safety equipment on vessels.

(e) The ~~Wildlife Resources~~ Commission may adopt rules prohibiting entry or use by vessels or swimmers of waters of the State immediately surrounding impoundment structures and powerhouses associated with electric generating facilities that are found to pose a hazard to water safety. This subsection shall not apply to the Person-Caswell Lake Authority, Carolina Power and Light Company Lake (Hyco).

"§ 75A-16: Repealed by Session Laws 1979, c. 830, s. 9, effective July 1, 1980.

"§ 75A-16.1. Boating safety course.

(a) The Commission shall institute and coordinate a statewide course of instruction in boating safety, and in so doing may cooperate with any political subdivision of the State or with any reputable organization having as one of its objectives the promotion of boating safety.

(b) The Commission shall designate those persons or agencies authorized to conduct the course of instruction, and this designation shall be valid until revoked by the Commission. Within 30 days of completion of a course of instruction, a designated person or agency shall submit to the Commission a list of the names of all persons who successfully completed the course of instruction conducted by the designated person or agency.

(c) The Commission may conduct the course in boating safety using Commission personnel or other persons at times or in areas in which competent agencies are unable or unwilling to meet the demand for instruction.

(d) The Commission shall issue a boating safety certification card to each person who successfully completes the course of instruction.

(e) The Commission shall adopt rules to provide for the course of instruction and the issuance of boating safety certification cards consistent with the purposes of this section.

(f) Any person who presents a fictitious boating safety certification card or who attempts to obtain a boating safety certification card through fraud is guilty of a Class 2 misdemeanor.

"**§ 75A-17. Enforcement of Chapter.**

(a) Every wildlife protector and every other law-enforcement officer of this State and its subdivisions shall have the authority to enforce the provisions of this Chapter and in the exercise thereof shall have authority to stop any vessel subject to this ~~Chapter; and,~~Chapter. Wildlife protectors or other law enforcement officers of this State, after having identified ~~himself in his official capacity,~~ themselves as law enforcement officers, shall have authority to board and inspect any vessel subject to this Chapter.

(b) In order to secure broader enforcement of the provisions of this Chapter, the ~~Wildlife Resources~~ Commission is authorized to enter into an agreement with the Department of Environment and Natural Resources whereby the enforcement personnel of the Department shall assume responsibility for enforcing the provisions of this Chapter in the territory and area normally policed by ~~such~~ enforcement personnel of the Commission and whereby the ~~Wildlife Resources~~ Commission shall contribute a share of the expense of such personnel according to a ratio of time and effort expended by them in enforcing the provisions of this Chapter, when ~~such~~ the ratio has been agreed upon by both of the contracting agencies. ~~Such~~ The agreement may be modified from time to time as conditions may warrant.

(c) Law enforcement vessels may use a flashing blue light on the waters of this State whenever they are engaged in law enforcement or public safety activities. The use of a blue light by any other vessel is prohibited. A person other than a law enforcement officer who activates, installs, or operates a flashing blue light on a vessel other than a law enforcement vessel is guilty of a Class 1 misdemeanor.

(d) A siren may not be used on any vessel other than an official law enforcement vessel or other official emergency response vessel.

(e) Vessels operated on the waters of this State shall stop when directed to do so by a law enforcement officer. When stopped, vessels shall remain at idle speed, or shall maneuver in such a way as to permit the officer to come alongside the vessel. Law enforcement officers may direct vessels to stop by using a flashing blue light, a siren, or an oral command by officers in uniform. A person who violates this subsection is guilty of a Class 2 misdemeanor.

(f) Vessels operated on the waters of this State shall slow to a no-wake speed when passing within 50 yards of a law enforcement vessel that is displaying a flashing blue light. A person who violates this subsection is guilty of a Class 3 misdemeanor.

"**§ 75A-18. Penalties.**

(a) Except as otherwise provided, ~~any~~ a person who violates ~~any~~ a provision of this Article or who violates ~~any~~ a rule ~~or regulation~~ adopted under authority of this Chapter ~~shall be~~is guilty of a Class 3 misdemeanor and shall only be subject to a fine not to exceed two hundred and fifty dollars ($250.00) for each ~~such~~ violation. ~~The~~ This limitation ~~prescribed by the preceding sentence~~ shall not apply in ~~any~~ a case where a more severe penalty ~~may be~~is prescribed in ~~any of said sections.~~this Chapter.

~~(b) Any person who violates any provision of G.S. 75A-10(a), (b), or (b1) shall be guilty of a Class 2 misdemeanor.~~

~~(c) Any person who violates any provision of G.S. 75A-13.1 shall be guilty of a Class 3 misdemeanor and upon conviction thereof shall only be fined no more than twenty-five dollars ($25.00).~~

~~(c1) Any boat livery that fails to carry liability insurance in violation of G.S. 75A-13.3(c1) shall be guilty of a Class 2 misdemeanor and shall only be subject to a fine not to exceed one thousand dollars ($1,000).~~

~~(d) A person who:~~

~~(1) Willfully violates G.S. 75A-10(d) is guilty of a Class 1 misdemeanor.~~

~~(2) Willfully violates G.S. 75A-10(d) and in so doing releases medical waste that creates a substantial risk of physical injury to any person who is not a participant in the offense is guilty of a Class F felony which may include a fine not to exceed fifty thousand dollars ($50,000) per day of violation.~~

~~(e) A person under 16 years of age who operates a personal watercraft in violation of the provisions of G.S. 75A-13.3 is guilty of an infraction as provided in G.S. 14-3.1.~~

"§ 75A-19. Operation of ~~watercraft~~ vessels by manufacturers, dealers, etc.

Notwithstanding any other provisions of this Chapter, the ~~Wildlife Resources~~ Commission may ~~promulgate such~~ adopt rules ~~and regulations~~ regarding the operation of ~~watercraft~~ vessels by manufacturers, distributors, dealers, and demonstrators as the Commission may deem necessary and proper."

SECTION 2. Article 4 of Chapter 75A of the General Statutes reads as rewritten:

"Article 4.

"~~Watercraft~~Vessel Titling Act.

"§ 75A-32. Short title.

This Article shall be known as the ~~Watercraft~~ Vessel Titling Act.

"§ 75A-33. Definitions.

~~As used in this Article, unless the context clearly requires a different meaning:~~

~~(1) "Commission" means the North Carolina Wildlife Resources Commission.~~

~~(2) "Watercraft" means every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water.~~

The definitions set forth in G.S. 75A-2 shall apply to this Article, unless the context clearly requires a different meaning.

"§ 75A-34. Who may apply for certificate of title; authority of employees of Commission.

(a) Any owner of ~~any watercraft in this State, which is not titled elsewhere, may~~ a motorized vessel or sailboat 14 feet or longer or any personal watercraft, as defined in G.S. 75A-13.3(a), that is applying for a certificate of number for the first time in this State pursuant to G.S. 75A-5(a), and any new owner of a motorized vessel or sailboat 14 feet or longer or any personal watercraft to whom ownership is being transferred under G.S. 75A-5(c) shall apply to the Commission for a certificate of ~~title.~~title for that vessel.

Any other vessel may be titled in this State at the owner's option. A vessel may not be titled in this State if it is titled in another state, unless the current title is surrendered along with the application for a certificate of title in this State. The Commission shall issue a certificate of title upon reasonable evidence of ownership, which may be established by ~~affidavits, bills of sale, or other similar documents.~~affidavit, bill of sale, manufacturer's statement of origin, certificate of title in this State, certificate of number or title from another state, or other document satisfactory to the Commission. Only one certificate of title may be issued for any vessel in this State. A vessel may not be titled in this State if it is documented with the United States Coast Guard. The Commission shall issue a certificate of title upon receipt of a completed application, along with the appropriate fee and reasonable evidence of ownership. The Commission shall require a manufacturer's statement of origin for all new vessels being issued a certificate of number and a certificate of title for the first time. The Commission may request a pencil tracing of the hull identification number (serial number) for vessels being transferred, in order to positively identify the vessel before issuance of a certificate of title for that vessel.

(b) Employees of the Commission are vested with the power to administer oaths and to take acknowledgements and affidavits incidental to the administration and enforcement of this section. They shall receive no compensation for these services.

"§ 75A-35. Form and contents of application.

(a) ~~Every application~~ The owner or the owner's attorney shall apply for a certificate of title for a vessel. ~~shall be made by the owner or his duly authorized attorney in fact, and~~The application shall contain the name, residence, and mailing address of the owner, the county where the vessel is taxed, ~~a statement of the applicant's title and~~ proof of ownership, and a statement of all liens or encumbrances upon the ~~watercraft~~ vessel in the order of their ~~priority, and the~~ priority. The application shall also contain the names and addresses of all persons having any interest in the ~~watercraft and the nature of the interest.~~ vessel.

(b) Every application for a certificate of title for a vessel shall contain a brief description of the ~~watercraft~~ vessel to be ~~registered,~~ titled, including the name of the manufacturer, ~~State identification~~ certificate of number, hull identification number, length, type, and principal material of construction, model year, ~~date of purchase, identification of the motor (including manufacturer's name and serial number, except on motors of 25 horsepower or less), and the name and address of the person from whom the watercraft was purchased.~~ and purchase information. It shall also include the name and address of the previous owner or owners from whom the vessel was obtained. If the vessel has an outboard motor of greater than 25 horsepower, the application shall also contain identification of the motor, including the serial number and manufacturer. The application shall be made on forms prescribed and furnished by the Commission and shall contain other information as may be required by the Commission.

"§ 75A-36. Notice by owner of change of address.

Whenever any person, after applying for or obtaining the certificate of title of a ~~watercraft,~~ vessel, moves from the address shown ~~in~~ on the application or ~~upon the~~ certificate of title, that person shall, within 30 ~~days,~~days of moving, notify the

Commission ~~in writing~~ of ~~his~~ the change of ~~address.~~address on a form acceptable to the Commission.

~~A fee of ten dollars ($10.00) shall be imposed upon anyone failing to comply with this section within the time prescribed.~~

"§ 75A-37. Certificate of title as evidence; duration; transfer of title.

(a) A certificate of title is prima facie evidence of the ownership of a ~~watercraft.~~ vessel. A certificate of title shall ~~be~~ remain in force for the life of the ~~watercraft so long as the certificate is owned or held by the legal holder.~~ vessel.

(b) Upon the sale, assignment, or transfer of a ~~watercraft which has been issued a certificate of title under this Article by the legal holder of the certificate, the certificate of title may, at the option of the purchaser or transferee, be delivered to the purchaser or transferee with an assignment on the certificate showing title in the purchaser or transferee. Otherwise, the certificate shall be returned to the Commission for cancellation.~~vessel for which a certificate of title has been issued under this Article, the legal holder of the certificate of title shall deliver it to the purchaser or transferee. The assignment on the certificate must be completed showing transfer of ownership to the purchaser or transferee and settlement of all outstanding liens and encumbrances. The new owner shall submit the assigned certificate of title to the Commission, accompanied by evidence satisfactory to the Commission that all outstanding liens have been released, with the application for transfer of title. The application shall contain all the information required by the Commission for the transfer in order to identify the vessel and the new owner. The application shall show any and all new liens and encumbrances on the vessel, in order of priority, incurred by the owner. The nature of the new liens and encumbrances shall also be given, along with the name and address of all secured parties.

"§ 75A-38. Commission's records; fees.

(a) The Commission shall maintain a record of any title it issues.

(b) The Commission shall charge a fee of twenty dollars ($20.00) ~~for~~ to issue ~~of each certificate of title, and~~ a new or transfer certificate of title. The Commission shall charge a fee of ten dollars ($10.00) for each ~~transfer of title, duplicate title, or~~ duplicate title it issues and for the recording of a supplemental lien.

"§ 75A-39. Duplicate certificate of title.

The Commission may issue a duplicate certificate of title plainly marked "duplicate" across its face upon application by the person entitled to hold the certificate if the Commission is satisfied that the original certificate has been lost, stolen, mutilated, destroyed, or has become illegible. Mutilated or illegible certificates shall be returned to the Commission with the application for a duplicate. If a duplicate certificate of title has been issued and the lost or stolen original is recovered, the original shall be promptly surrendered to the ~~Commission for cancellation.~~ Commission. A duplicate certificate of title, not bearing the word "duplicate" across its face, shall be issued for anyone having an address change or name change so long as the original title is surrendered and the appropriate fees paid as provided in G.S. 75A-38(b). If the original certificate of title is not surrendered to the Commission, the duplicate certificate of title shall be plainly marked "duplicate" across its face.

"**§ 75A-40. Certificate to show security interests.**

The Commission, after receiving an application for a certificate of title ~~to a watercraft,~~ for a vessel, shall, upon issuing the certificate of title to the owner, show upon the face of the certificate of title all security interests in the order of their priority as shown in the application.

"**§ 75A-41. Security interests subsequently created.**

Except for security interests in ~~watercraft~~ vessels that are inventory held for sale, security interests created in ~~watercraft~~ vessels by the voluntary act of the owner after the original issue of title to the owner must be shown on the certificate of title. In such cases, the owner shall file an application with the Commission on a ~~blank~~ form furnished for that purpose, setting forth ~~the~~ all security interests and other information as the Commission requires. The Commission, if satisfied that it is proper that the ~~same~~ security interests be ~~recorded and~~ recorded, shall upon surrender of the certificate of title covering the ~~watercraft, shall thereupon~~ vessel, issue a new certificate of title showing ~~their~~ any security interests in the order of the priority according to the date of the filing of the application. For the purpose of recording the subsequent security interest, the Commission may require any secured party to deliver the certificate of title to the Commission. The newly issued certificate shall be sent or delivered to the secured party ~~from whom the prior certificate was obtained.~~of first priority listed on the certificate of title.

"**§ 75A-42. Certificate as notice of security interest.**

A certificate of title, when issued by the Commission showing a security interest, shall be deemed adequate notice to the State, creditors, and purchasers that a security interest in the ~~watercraft exists and the~~vessel exists. No other recording or filing of the creation or reservation of a security interest in the county or city wherein the purchaser or debtor resides or elsewhere is ~~not~~ necessary and shall not be required. ~~Watercraft,~~ Vessels, other than those that are inventory held for sale, for which a certificate of title is currently in ~~effect~~effect, shall be exempt from the provisions of G.S. 25-9-309, 25-9-310, 25-9-312, 25-9-320, 25-9-322, 25-9-323, 25-9-324, 25-9-331, 25-9-404, 25-9-405, 25-9-406, and 25-9-501 to 25-9-526 for so long as the certificate of title remains in effect.

"**§ 75A-43. Security interest may be filed within 30 days after purchase.**

If application for the recordation of a security interest to be placed upon a ~~watercraft~~ vessel is filed in the principal office of the Commission within 30 days from the date of the applicant's purchase of the ~~watercraft,~~vessel, it shall be valid to all persons, including the State, as if the recordation had been done on the day the security interest was acquired.

"**§ 75A-44. Priority of security interests shown on certificates.**

Except for security interests in ~~watercraft~~ vessels that are inventory held for sale, security interests shown upon the certificates of title issued by the Commission pursuant to applications for certificates shall have priority over any other liens or security interests against the ~~watercraft~~ vessel however created and recorded, except for a mechanics lien for repairs, provided that the mechanic furnishes the holder of any

recorded lien who may request it with an itemized sworn statement of the work done and materials supplied for which the lien is claimed.

"§ 75A-45. Legal holder of certificate of title subject to security interest.

The certificate of title of a ~~watercraft~~vessel shall be delivered to the person holding the security interest having first priority upon the ~~watercraft~~ vessel and retained by that person until the entire amount of the security interest is fully paid by the owner of the ~~watercraft.~~ vessel. The certificate of title shall then be delivered to the secured party next in order of priority and so on, or, if none, then to the owner of the ~~watercraft.~~ vessel.

"§ 75A-46. Release of security interest shown on certificate of title.

An owner, upon securing the release of any security interest upon a ~~watercraft~~ vessel shown upon the certificate of title issued for the ~~watercraft,~~vessel, may exhibit the documents evidencing the release, signed by the person or persons making the release, and the certificate of title to the Commission. When it is impossible to secure the release from the secured party, the owner may exhibit to the Commission any available evidence showing that the debt secured has been satisfied, together with a statement by the owner under oath that the debt has been paid. ~~When~~ If the Commission ~~is satisfied as to the genuineness and regularity of the satisfied debt,~~determines that the secured debt has been satisfied in full, the Commission shall issue to the owner either a new certificate of title in proper form or an endorsement or rider showing the release of the security interest which the Commission shall attach to the outstanding certificate of title.

"§ 75A-47. Surrender of certificate required when security interest paid.

It is unlawful and constitutes a Class 1 misdemeanor for a secured party who holds a certificate of title as provided in this Article to refuse or fail to surrender the certificate of title to the person legally entitled to it within 10 days after ~~his~~ the security interest has been paid and satisfied.

"§ 75A-48. Levy of execution, etc.

A levy made by virtue of an execution or other proper court order, upon a ~~watercraft~~ vessel for which a certificate of title has been issued by the Commission, shall constitute a lien, subsequent to security interests previously recorded by the Commission and subsequent to security interests in inventory held for sale and perfected as otherwise permitted by law, if and when the officer making the levy reports to the Commission at its principal office, on forms provided by the Commission, that the levy has been made and that the ~~watercraft~~ vessel levied upon has been seized by and is in the custody of the officer. Should the lien thereafter be satisfied or should the ~~watercraft~~ vessel levied upon and seized thereafter be released by the officer, ~~he~~ the officer shall immediately report that fact to the Commission at its principal office. ~~Any owner who, after~~ After a levy and seizure by an officer and before the officer reports the levy and seizure to the Commission, any person who fraudulently ~~assigns or transfers his title to or interest in the watercraft, or~~ assigns, transfers, causes the certificate of title to be assigned or transferred, or causes a security interest to be shown upon ~~such~~ the certificate of title, is guilty of a Class 1 misdemeanor.

"§ 75A-49. Registration prima facie evidence of ownership; rebuttal.

~~Issuance of registration under the provisions of this Chapter shall be prima facie evidence of ownership of a watercraft and entitlement to a certificate of title under the provisions of this Article, but the registration and certificate of title shall be subject to rebuttal.~~A valid certificate of number issued under the provisions of this Chapter, or any similar document issued under the jurisdiction of any other state or country, shall be prima facie evidence of ownership of a vessel and entitlement to a certificate of title under the provisions of this Article, but ownership established by such documents shall be subject to rebuttal."

SECTION 3. This act becomes effective January 1, 2007, and applies to offenses committed on or after that date.

SENATE BILL 948:
Amend Boating Safety/Vessel Titling Law

BILL ANALYSIS

Committee:	House Finance	**Date:**	July 10, 2006
Introduced by:	Sen. Hoyle	**Summary by:**	Cindy Avrette
Version:	Third Edition		Committee Counsel

SUMMARY: Senate Bill 948 makes numerous changes to the boating safety and vessel titling laws, increases certain fees, adds penalties for certain violations of boating safety and vessel titling laws, and makes other changes.

BILL ANALYSIS: Senate Bill 948 makes the following changes to the laws related to boating safety and vessel titling:

Fee Increases:

- Increases the fee for a transfer of certificate of title from $10 to $20. This fee was established in 1989 and has not been changed since that time. The fee for a transfer of certificate of title would now be equivalent to the fee for issuance of a new certificate of title.
- Increases the fee for issuance of a duplicate certificate of number from $2.00 to $5.00. This fee was last changed in 1979, when the fee was increased from $1.00 to $2.00.

Boating Safety:

- Formalizes the framework for WRC to implement and coordinate boating safety education courses, to designate boating safety instructors, and to issue boating safety certification cards to persons who complete an approved course.
- Clarifies boating safety requirements by authorizing WRC to adopt rules to conform to the Federal Boat Safety Act of 1971 and federal regulations adopted pursuant to the Act.
- Amends the incident reporting requirements for operators of a vessel that is involved in a collision, accident, casualty or other occurrence involving a vessel to require reporting of disappearance indicating death or injury in addition to other reporting requirements and to raise physical damage threshold for reporting accidents from $500 to $2,000.
- Provides that law enforcement vessels may use a blue flashing light and sirens whenever they are engaged in law enforcement or public safety activities. Establishes penalties for operating a siren or blue light on a vessel that is not a law enforcement vessel or other official emergency vessel.
- Requires a vessel to slow to a no-wake speed when passing within 50 yards of a law enforcement vessel that is displaying a flashing blue light.

Vessel Titling:

- Requires the titling of all motorized vessels or sailboats 14 feet or longer and any personal watercraft at the time an application for a new certificate of number in this State is submitted and at the time ownership of a vessel is being transferred. The bill also allows (but does not require) the titling of other vessels.

- Replaces the term "vessel registration" with "certificate of number" as used to provide identification numbers for vessels registered in the State. A certificate of number is issued on an annual basis and serves as a registration number for vessels.
- Establishes a mechanism for canceling the certificate of title or certificate of number for destroyed or junked vessels and directs WRC to adopt rules to establish a mechanism by which a person may acquire ownership of an abandoned vessel.
- Clarifies the responsibilities and requirements for vessel agents, removes the requirement that vessel agents provide a security bond, and adds penalty provisions for actions taken by vessel agents that constitute criminal activity.

Makes numerous additional clarifying, conforming, and technical changes.

EFFECTIVE DATE: The bill would become effective January 1, 2007, and apply to acts occurring on and after that date.

Tim Dodge, counsel to the Senate Agriculture/Environment/Natural Resources Committee, substantially contributed to this summary.

S0948e3-SMRB

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: Senate Bill 948 (Third Edition)

SHORT TITLE: Amend Boating Safety/Vessel Titling Law.

SPONSOR(S): Senator Hoyle

FISCAL IMPACT

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

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES:	(in dollars)				
General Fund	No Impact to General Fund				
Wildlife Resources Commission	823,508	831,743	840,060	848,461	856,945
EXPENDITURES					
General Fund	Small fiscal impact likely; exact amount cannot be determined.				
Correction	Amount cannot be determined.				
Judicial	Amount cannot be determined.				
ADDITIONAL PRISON BEDS*	None anticipated; impact on local jail beds possible but cannot be determined.				
POSITIONS (cumulative):	None anticipated.				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Wildlife Resources Commission; Department of Correction; Judicial Branch.

EFFECTIVE DATE: January 1, 2007.

**This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.*

BILL SUMMARY: Senate Bill 948 makes vessel titling mandatory in North Carolina, adds several fees to existing statutes regarding boat safety and vessel titling, creates several new criminal offenses, and makes numerous technical changes. Senate Bill 948:

- Increases the fee for transferring a vessel title from $10 to $20
- Increases the fee for duplicate certificate of number from $2 to $5
- And, specifies that the Wildlife Resources Commission shall use at least three dollars ($3.00) of each one-year certificate of number fee and at least nine dollars ($9.00) of each three-year certificate of number fee for boating access area acquisition, development, and maintenance.

Senate Bill 948 creates these new criminal offenses:

G.S. 75A-5.2(h) – Creates new Class 1 misdemeanor offenses for vessel agents who do any of the following:

(1) Withhold or misappropriate funds generated from vessel transactions.
(2) Falsify records of vessel transactions.
(3) Willfully and knowingly assist or allow a person to obtain a certificate of number or certificate of title for which that person is ineligible.
(4) Willfully issue a backdated certificate of number or certificate of title.
(5) Willfully include false information or omit material information on vessel transaction forms and records regarding either:
    a. A person's entitlement to a particular certificate of number or certificate of title.
    b. The applicability or term of a particular certificate of number.
(6) Charge or accept any fee, remuneration, or other item of value that exceeds the fee amounts provided by statute.

G.S. 75A-16.1(f) – Creates a new Class 2 misdemeanor offense for presenting a fictitious boating safety certification, or for attempting to obtain a boating safety certification card through fraud.

G.S. 75A-17(c) – Creates a new Class 1 misdemeanor offense for activating, installing, or operating a flashing blue light on a vessel other than a law enforcement vessel.

G.S. 75A-17(e) – Creates a new Class 2 misdemeanor offense for failure to stop, remain at idle speed, or maneuver in such a way as to permit a law enforcement officer to come alongside the vessel when directed to do so by a law enforcement officer.

G.S. 75A-17(f) – Creates a new Class 3 misdemeanor offense for failure to slow to a no-wake speed when passing within 50 yards of law enforcement vessel that is displaying a flashing blue light.

ASSUMPTIONS AND METHODOLOGY:

The Wildlife Resources Commission (WRC) administers the registration and titling of vessels to the public. Unlike many surrounding states, North Carolina does not currently require that vessels be titled although vessel owners may choose to title their vessels. Senate Bill 948 requires that vessels be titled. Mandatory titling of vessels will conform to surrounding states and will improve and streamline the existing titling process as well as add ownership protection and identification for vessels.

The chart below provides detail on the three fee-related provisions in Section 75A-38(b) of this bill that would generate new revenue for the WRC.

Senate Bill 948, Estimated Gross Fee Revenues from Section 75A-38(b)					
Fee	2006-07	2007-08	2008-09	2009-10	2010-11
Mandatory vessel titling fee*	753,830	761,368	768,982	776,672	784,439
Increase in transfer of vessel title fee	100,450	101,455	102,469	103,494	104,529
Increase in duplicate certificate of number fee	21,792	22,010	22,230	22,452	22,677
Total, all fee increases	**876,072**	**884,833**	**893,681**	**902,618**	**911,644**

*Includes revenue from titling of new vessels and from non-titled vessels being transferred to a new owner

Under current law, vessel agents retain set commissions for specified statutory transactions as compensation for services rendered to the WRC and the general public. Vessel agents, as a subset of wildlife agents, conduct a considerable amount of WRC-related transactions; in 2005, six percent (6%) of gross fee collections was retained by wildlife agents. This projection assumes that 6% of collections will be retained by vessel agents. The chart below shows the estimated total fiscal impact of this legislation (gross revenues less 6% in commissions for vessel agents).

Senate Bill 948, Net Fee Revenues					
	2006-07	2007-08	2008-09	2009-2010	2010-11
6% of gross collections to wildlife agents	(52,564)	(53,090)	(53,621)	(54,157)	(54,699)
Total	**823,508**	**831,743**	**840,060**	**848,461**	**856,945**

Department of Correction

The Sentencing and Policy Advisory Commission prepares prison population projections for each criminal penalty bill. The Commission assumes for each bill that increasing criminal penalties does not have a deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume savings due to deterrent effects for this bill or any criminal penalty bill. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available over the immediate five-year horizon, or beyond.*

Because this bill creates new offenses, there are no historical data to estimate the potential impact on the State's prison population. Thus, it is not known how many offenders might be sentenced under this bill. In 2004-05, 19% of Class 1, 16% of Class 2, and 23% of Class 3 misdemeanor convictions resulted in active sentences, with average estimated times served of 30.7, 11.8, and 2.9 days, respectively. Since offenders serving active sentences of 90 days or less are housed in county jails, any new offenses resulting from this bill are not expected to impact the State's prison population. The impact on local jail populations is not known.

Department of Correction – Division of Community Corrections

In 2004-05, 79%, 83%, and 77% of Class 1, 2, and 3 misdemeanor convictions resulted in some form of community punishment, primarily special and intensive supervision probation. Assuming some additional convictions and community sentencing, additional costs for probation supervision may be incurred. Presently, general supervision from a probation officer costs the Division of Community Corrections $1.93 per offender, per day. For offenders on special sanction, such as intensive supervision probation or electronic house arrest, the daily costs are higher – $12.95 and $6.71, respectively.

In addition, offenders supervised by DCC are required to pay a $30 per month supervision fee; those serving community service are required pay a one-time fee of $200; and those on electronic house arrest or electronic monitoring must pay a one-time $90 fee. This money is collected by the Court System and goes to the General Fund. The percentage of fees actually collected cannot be determined from the Court's records, but survey information indicates that the compliance rate for supervised probationers is around 48%.

Judicial Branch

For most criminal penalty bills, the Administrative Office of the Courts provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

There is no data with which to estimate the number of violations that might result under these new provisions. However, the AOC anticipates an increase in the workload of district court judges, deputy clerks, and district attorneys as a result of this bill. Currently, the AOC estimates court-time costs for Class 1, 2, and 3 misdemeanors of $3,153, $2,380, and $2,380 per trial, respectively; cost estimates per plea are $224, $211, and $208, respectively.

SOURCES OF DATA: North Carolina Wildlife Resources Commission; North Carolina Sentencing and Policy Advisory Commission; North Carolina Administrative Office of the Courts.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Brenna Erford, Bryce Ball, and Jim Mills

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: June 5, 2006

Signed Copy Located in the NCGA Principal Clerk's Offices

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☒Committee Substitute #2 for

SB 948 A BILL TO BE ENTITLED AN ACT TO MAKE VARIOUS AMENDMENTS TO THE BOATING SAFETY AND VESSEL TITLING LAW.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 2

SENATE BILL 1804
Finance Committee Substitute Adopted 6/8/06

Short Title: Tryon/Boiling Springs Occupancy Tax. (Local)

Sponsors:

Referred to:

May 24, 2006

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE TOWNS OF TRYON AND BOILING SPRINGS TO LEVY A ROOM OCCUPANCY TAX.

The General Assembly of North Carolina enacts:

PART I. TRYON OCCUPANCY TAX

SECTION 1.1 Occupancy tax. – (a) Authorization and Scope. – The Board of Commissioners of Tryon may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 1.1(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 1.1(c) Distribution and Use of Tax Revenue. – The Town of Tryon shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Tryon Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in the Town of Tryon and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

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

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct

market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

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

SECTION 1.2. Tourism Development Authority. – (a) Appointment and Membership. – When the Board of Commissioners adopts a resolution levying a room occupancy tax under this Part, it shall also adopt a resolution creating the Tryon Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members shall be individuals who are affiliated with businesses that collect the tax in the town, and at least one-half of the members shall be individuals who are currently active in the promotion of travel and tourism in the town. The Board of Commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

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

SECTION 1.2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this Part for the purposes provided in Section 1 of this Part. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

SECTION 1.2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Tryon Board of Commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the Board of Commissioners may require.

PART II. BOILING SPRINGS OCCUPANCY TAX

SECTION 2.1. Occupancy Tax. – (a) Authorization and Scope. – The Boiling Springs Town Council may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 2.1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 2.1.(c) Distribution and Use of Tax Revenue. – The Town of Boiling Springs shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Boiling Springs Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Boiling Springs and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

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

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

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

SECTION 2.2. Boiling Springs Tourism Development Authority. – (a) Appointment and Membership. – When the Boiling Springs Town Council adopts a resolution levying a room occupancy tax under this Part, it shall also adopt a resolution creating a town Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the town, and at least one-half of the members must be individuals who are currently active in the promotion of travel and tourism in the town. The town council shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

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

SECTION 2.2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this Part for the purposes provided in this Part. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

SECTION 2.2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Boiling Springs Town Council on its receipts and expenditures for the preceding quarter and for the year in such detail as the town council may require.

PART III. ADMINISTRATIVE PROVISIONS

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

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

PART IV. EFFECTIVE DATE

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

SENATE BILL 1804:
Tryon/Boiling Springs Occupancy Tax

BILL ANALYSIS

Committee:	House Finance Subcommittee On Occupancy Tax	**Date:**	June 21, 2006
Introduced by:	Sen. Apodaca	**Summary by:**	Judy Collier
Version:	Second Edition		Research Assistant

SUMMARY: ***Senate Bill 1804 authorizes the Towns of Tryon and Boiling Springs to levy a 3% room occupancy tax. Two-thirds of the proceeds would be used to promote travel and tourism and one-third would be used for tourism-related expenditures. This bill conforms to the guidelines supported by the North Carolina Travel and Tourism Coalition and adhered to by the House Finance Committee. The Proposed Committee Substitute (PCS) to the First Edition of SB 1804 received a favorable report from Senate Finance Committee on June 8, 2006.***

CURRENT LAW: The Town of Tryon is currently not authorized to levy a room occupancy tax. The town is located in Polk County, which was authorized to levy a 3% room occupancy tax in 1985. The county occupancy tax is administered by the county and is used for the promotion of travel and tourism.

The Town of Boiling Springs is not currently authorized to levy a room occupancy tax. The town is located in Cleveland County, which was authorized to levy a 3% occupancy tax in 1989. The county occupancy tax is administered by the county and may be used for any public purpose.

BILL ANALYSIS: Senate Bill 1804 authorizes the Town of Tryon and the Town of Boiling Springs to levy a room occupancy tax of up to 3%. The proceeds must be remitted to a town Tourism Development Authority (TDA), which must use at least two-thirds of the proceeds to promote travel and tourism and the remainder for tourism-related expenditures.

These administrative and use provisions conform to the uniform guidelines referenced above and detailed in the chart below:

UNIFORM OCCUPANCY TAX PROVISIONS
Rate – The county tax rate cannot exceed 6% and the city tax rate, when combined with the county rate, cannot exceed 6%.
Use – Two-thirds of the proceeds must be used to promote travel and tourism and the remainder must be used for tourism related expenditures.
Definitions The term "net proceeds", "promote travel and tourism", and "tourism related expenditures" are defined terms.
Administration – The net revenues must be administered by a local tourism development authority that has the authority to determine how the tax proceeds will be used, is created by a local ordinance, and at least 1/2 of the members must be currently active in the promotion of travel and tourism in the county and 1/3 of the members must be affiliated with organizations that collect the tax.
Costs of Collection – The taxing authority may retain from the revenues its actual costs of collection, not to exceed 3% of the first $500,000 collected each year plus 1% of the remainder collected each year.

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

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

S1804e2-SMRE

Trina Griffin, Committee Staff to Senate Finance Committee substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

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

DATE: July 10, 2006

TO: Senator Apodaca

FROM: Rodney Bizzell
Fiscal Research Division

RE: Senate Bill 1804 (Unknown Edition)

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES:					
Town of Tryon	**$20,000**	**$20,600**	**$21,000**	**$21,500**	**$22,000**
Town of Boiling Springs	**$14,700**	**$15,100**	**$15,400**	**$15,700**	**$16,000**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Town of Tryon, Town of Boiling Springs

EFFECTIVE DATE: Becomes effective when law.

BILL SUMMARY: Senate Bill 1804 authorizes the Towns of Tryon and Boiling Springs to levy a 3% room occupancy tax. Two-thirds of the proceeds would be used to promote travel and tourism and one-third would be used for tourism-related expenditures. This bill conforms to the guidelines supported by the North Carolina Travel and Tourism Coalition and adhered to by the House Finance Committee.

ASSUMPTIONS AND METHODOLOGY:

Town of Tryon
The Town of Tryon has three bed and breakfasts and a conference center facility. The town estimates that the 3% occupancy tax would generate approximately $20,000 annually. The general Consumer Price Index is used to project revenues for future years.

Town of Boiling Springs
According to the Town of Boiling Springs, there is 1 motel in the city limits with approximately 50 rooms. Assuming an average room rate of $45 per night and a 60% rate of room occupancy, FRD estimates the 3% occupancy tax would generate $14,700 per year. Because no historic data is available, the General Consumer Price Index estimated rate of increase is used to estimate future growth in occupancy tax receipts. No development of additional motels or other accommodations is assumed in the estimates of subsequent year revenues.

SOURCES OF DATA: Town of Tryon, Town of Boiling Springs

TECHNICAL CONSIDERATIONS: None

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☒Committee Substitute for

SB 1804 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE TOWNS OF TRYON AND BOILING SPRINGS TO LEVY A ROOM OCCUPANCY TAX.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 3

SENATE BILL 2043

Finance Committee Substitute Adopted 6/22/06
Third Edition Engrossed 6/29/06

Short Title: Increase Mortgage Lending Fees. (Public)

Sponsors:

Referred to:

May 26, 2006

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE MORTGAGE LENDING ACT BY CHANGING THE REGISTRATION FEES FOR MORTGAGE LICENSING AND RENEWAL AND BY AUTHORIZING THE COMMISSIONER TO PARTICIPATE IN A NATIONAL LICENSING SYSTEM AND DATABASE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-243.05 reads as rewritten:

"**§ 53-243.05. Qualifications for licensure; issuance.**

(a) Any person, other than an exempt person, desiring to obtain a license pursuant to this Article shall make written application for licensure to the Commissioner on forms prescribed by the Commissioner. In accordance with rules adopted by the Commission, the application shall contain any information the Commissioner deems necessary regarding the following:

(1) The applicant's name and address and social security number.

(2) The applicant's form and place of organization, if applicable.

(3) The applicant's proposed method of and locations for doing business, if applicable.

(4) The qualifications and business history of the applicant and, if applicable, the business history of any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the applicant, including: (i) a description of any injunction or administrative order by any state or federal authority to which the person is or has been subject; (ii) a conviction of a misdemeanor involving fraudulent dealings or moral turpitude or relating to any aspect of the residential mortgage lending business; (iii) any felony convictions.

(5) With respect to an application for licensing as a mortgage banker or broker, the applicant's financial condition, credit history, and business

history; and with respect to the application for licensing as a loan officer, the applicant's credit history and business history.

(6) The applicant's consent to a federal and State criminal history record check and a set of the applicant's fingerprints in a form acceptable to the Commissioner. In the case of an applicant that is a corporation, partnership, limited liability company, association, or trust, each individual who has control of the applicant or who is the managing principal or a branch manager shall consent to a federal and State criminal history record check and submit a set of that individual's fingerprints pursuant to this subdivision. Refusal to consent to a criminal history record check constitutes grounds for the Commissioner to deny licensure to the applicant as well as to any entity (i) by whom or by which the applicant is employed, (ii) over which the applicant has control, or (iii) as to which the applicant is the current or proposed managing principal or a current or proposed branch manager.

(b) In addition to the requirements imposed by the Commissioner under subsection (a) of this section, each individual applicant for licensure as a loan officer shall:

(1) Be at least 18 years of age.

(2) Have satisfactorily completed, within the three years immediately preceding the date application is made, a mortgage lending fundamentals course approved by the Commissioner. The course shall consist of at least eight hours of classroom instruction in subjects related to mortgage lending approved by the Commissioner. In addition, the applicant shall have satisfactorily completed a written examination approved by the Commissioner or possess residential mortgage lending education or experience in residential mortgage lending transactions that the Commissioner deems equivalent to the course.

(c) In addition to the requirements under subsection (a) of this section, each applicant for licensure as a mortgage broker or mortgage banker at the time of application and at all times thereafter shall comply with the following requirements:

(1) Except as provided for in subdivision (1a) of this subsection, if the applicant is a sole proprietor, the applicant shall have at least three years of experience in residential mortgage lending or other experience or competency requirements as the Commissioner may impose. Experience as an exclusive mortgage broker or as a limited loan officer shall not constitute mortgage-lending experience under this subdivision.

(1a) If an individual applicant to be licensed as a mortgage broker meets all other requirements for licensure under this section but does not meet the requirements of subdivision (1) of this subsection, the individual

applicant may be licensed as an exclusive mortgage broker upon compliance with all of the following:

a. Successfully complete both a residential mortgage-lending course approved by the Commissioner of not less than 40 hours of classroom instruction, and a written examination approved by the Commissioner.

b. Act exclusively as a mortgage broker for a single mortgage banker licensee or single exempt mortgage banker for whom the broker shall be deemed an agent, who shall be responsible for supervising the broker as required by this Article, who shall sign the license application of the applicant, and who shall be jointly and severally liable with the broker for any claims arising out of the broker's mortgage lending activities.

c. Shall be compensated for the broker's mortgage brokering activities on a basis that is not dependent upon the loan amount, interest rate, fees, or other terms of the loans brokered.

d. Shall not handle borrower or other third-party funds in connection with the brokering or closing of mortgage loans.

(2) If the applicant is a general or limited partnership, at least one of its general partners shall have the experience as described under subdivision (1) of this subsection.

(3) If the applicant is a corporation, at least one of its principal officers shall have the experience as described under subdivision (1) of this subsection.

(4) If the applicant is a limited liability company, at least one of its managers shall have the experience as described under subdivision (1) of this subsection.

(d) Each applicant shall identify one person meeting the requirements of subsection (c) of this section to serve as the applicant's managing principal.

(e) Every applicant for initial licensure shall pay a filing fee ~~of~~ not to exceed~~one thousand dollars ($1,000)~~ one thousand two hundred fifty dollars ($1,250) for licensure as a mortgage broker or mortgage banker or ~~fifty dollars ($50.00)~~ sixty-seven dollars and fifty cents ($67.50) for licensure as a loan officer or limited loan officer, in addition to the actual cost of obtaining credit reports and State and national criminal history record checks.

(f) A mortgage banker shall post a surety bond in the amount of one hundred fifty thousand dollars ($150,000), and a mortgage broker shall post a surety bond in the amount of fifty thousand dollars ($50,000). The surety bond shall be in a form satisfactory to the Commissioner and shall run to the State for the benefit of any claimants against the licensee to secure the faithful performance of the obligations of the licensee under this Article. The aggregate liability of the surety shall not exceed the principal sum of the bond. A party having a claim against the licensee may bring suit directly on the surety bond, or the Commissioner may bring suit on behalf of any claimants, either in one action or in successive actions. Consumer claims shall be given

priority in recovering from the bond. Any appropriate deposit of cash or securities shall be accepted in lieu of any bond that is required. An audited financial statement from a qualified lender showing a net worth of two hundred fifty thousand dollars ($250,000) or more shall be accepted in lieu of any bond required.

(g) Any general partner, manager of a limited liability company, or officer of a corporation who individually meets the requirements under subsection (b) of this section shall, upon payment of the applicable fee, meet the qualifications for licensure as a loan officer subject to the provisions of subsection (i) of this section.

(h) Each principal office and each branch office of a mortgage broker or mortgage banker licensed under the provisions of this Article shall be issued a separate license. A licensed mortgage broker or mortgage banker shall file with the Commissioner an application on a form prescribed by the Commissioner that identifies the address of the principal office and each branch office and branch manager. A filing fee ~~of~~ not to exceed ~~one hundred dollars ($100.00)~~ one hundred twenty-five dollars ($125.00) shall be assessed by the Commissioner for each branch office issued a license.

(i) If the Commissioner determines that an applicant meets the qualifications for licensure and finds that the financial responsibility, character, and general fitness of the applicant are such as to command the confidence of the community and to warrant belief that the business will be operated honestly and fairly, the Commissioner shall issue a license to the applicant. In addition, for an applicant qualifying as an exclusive mortgage broker, the Commissioner shall determine if the mortgage broker/mortgage banker relationship is in the public interest."

SECTION 2. G.S. 53-243.06 reads as rewritten:

"**§ 53-243.06. License renewal; termination.**

(a) All licenses issued by the Commissioner under the provisions of this Article shall expire annually on the 30th day of June following issuance or on any other date that the Commissioner may determine. The license shall become invalid after that date unless renewed. A license may be renewed 45 days prior to the expiration date by compliance with subsection (b1) of this section and by paying to the Commissioner, in addition to the actual cost of obtaining credit reports and State and national criminal history record checks as the Commissioner may require, a renewal fee as follows:

(1) Licensed mortgage bankers shall pay an annual fee ~~of~~ not to exceed ~~five hundred dollars ($500.00)~~ six hundred twenty-five dollars ($625.00) and ~~one hundred dollars ($100.00)~~ one hundred twenty-five dollars ($125.00) for each branch office.

(2) Licensed mortgage brokers shall pay an annual fee ~~of~~ not to exceed ~~five hundred dollars ($500.00)~~ six hundred twenty-five dollars ($625.00) and ~~one hundred dollars ($100.00)~~ one hundred twenty-five dollars ($125.00) for each branch office. Licensed exclusive mortgage brokers shall pay an annual fee ~~of~~ not to exceed ~~five hundred dollars ($500.00).~~ six hundred twenty-five dollars ($625.00).

(3) Licensed loan officers shall pay an annual fee ~~of~~ not to exceed ~~fifty dollars ($50.00).~~ sixty-seven dollars and fifty cents ($67.50).

(b) If a mortgage banker or mortgage broker license is not renewed prior to the applicable expiration date, then an additional two hundred fifty dollars ($250.00) in addition to the renewal fee under subsection (a) of this section shall be assessed as a late fee to any renewal. If a loan officer or limited loan officer license is not renewed prior to the applicable expiration date, then an additional fifty dollars ($50.00) in addition to the renewal fee under subsection (a) of this section shall be assessed as a late fee to any renewal. In the event a licensee fails to obtain a reinstatement of the license within 90 days after the date the license expires, the Commissioner may require the licensee to comply with the requirements for the initial issuance of a license under the provisions of this Article.

(b1) When required by the Commissioner, each individual described in G.S. 53-245.05(a)(6) shall furnish to the Commissioner his or her consent to a criminal history record check and a set of his or her fingerprints in a form acceptable to the Commissioner. Refusal to consent to a criminal history record check may constitute grounds for the Commissioner to deny renewal of the license of the person as well as the license of any other person by which he or she is employed, over which he or she has control, or as to which he or she is the current or proposed managing principal or a current or proposed branch manager.

(c) Licenses issued under this Article are not assignable. Control of a licensee shall not be acquired through a stock purchase or other device without the prior written consent of the Commissioner. The Commissioner shall not give written consent if the Commissioner finds that any of the grounds for denial, revocation, or suspension of a license pursuant to G.S. 53-243.12 are applicable to the acquiring person."

SECTION 3. Article 19A of Chapter 53 of the General Statutes is amended by adding two new sections to read:

"**§ 53-243.17. Participation in national mortgage licensing system; licensing proprietary software.**

(a) The Commissioner of Banks is authorized to participate in the formation and operation of a centralized and automated licensing system and data depository funded by State mortgage regulators and law enforcement agencies. Pursuant to this authority, the Commissioner may:

(1) Cause funds of the Office of Commissioner of Banks to be applied to the initial capitalization, organizational expenses, and operating expenses of a limited liability company, nonprofit corporation or foundation, or other entity created to operate the licensing system and data depository and to serve as a manager or director of the entity;

(2) Enter into operating agreements, information sharing agreements, interstate cooperative agreements, and technology licensing agreements necessary to the organization and operation of the entity and the licensing system and data depository; and

(3) Take such further actions as are reasonably necessary to give effect to the provisions of this section.

(b) The Commissioner is authorized to enter into agreements to license the use of the proprietary software owned by the Office of the Commissioner of Banks to banking, mortgage, or financial services supervisory agencies of other states.

(c) Notwithstanding any other provision of this section, the Commissioner retains full authority and discretion under this Article to license mortgage brokers, mortgage bankers, loan officers, and limited loan officers and to enforce this Article to its fullest extent. Nothing in this section shall be deemed to be a reduction or derogation of that authority and discretion.

"**§ 53-243.18. Payment of fees.**

Payment of fees specified in this Article shall be made to the Office of Commissioner of Banks or, at the election of the Commissioner, to a national mortgage licensing system, agency, or enterprise designated by the Commissioner."

SECTION 4. The amount set as the maximum amount that may be charged for fees in this act shall be the actual amount of the fee until the Banking Commission adopts rules setting the fee at a lower rate.

SECTION 5. This act becomes effective October 1, 2006.

SENATE BILL 2043:
Increase Mortgage Lending Fees

BILL ANALYSIS

Committee:	House Finance	**Date:**	July 10, 2006
Introduced by:	Sen. Rand	**Summary by:**	Karen Cochrane-Brown
Version:	Third Edition		Staff Attorney

SUMMARY: The Third Edition of Senate Bill 2043 would change the fees that may be charged under the Mortgage Lending Act by establishing maximum amounts and by giving the Banking Commission authority to adopt rules setting the fees in a lower amount when appropriate. The bill would also authorize the Commissioner of Banks to participate in a centralized national licensing system and database funded and administered by state mortgage regulators.

CURRENT LAW:

The Mortgage Lending Act, which was enacted in 2001, is a licensing and regulatory statute for the mortgage lending industry. Under the current law, mortgage bankers, mortgage brokers, and loan officers are required to be licensed by the Commissioner of Banks before engaging in the business of mortgage lending or mortgage brokering, unless exempt. The law exempts from licensing:

- depository institutions (banks, wholly owned subsidiaries of banks, savings and loans, credit unions),
- life insurance companies,
- governmental lenders,
- nonprofits that make mortgage loans,
- persons that make no more than five loans a year, and
- real estate brokers who do not receive compensation for making loans.

The Commissioner of Banks has broad enforcement powers, including the power to revoke licenses and impose civil fines for violations of the law. Engaging in the mortgage banking or brokering business without a license is a Class I felony.

The licensing and renewal fees established in the Mortgage Lending Act have not been increased since the law's enactment in 2001.

BILL ANALYSIS:

Senate Bill 2043 makes the following changes to the Mortgage Lending Act;

SECTION 1 increases the statutory maximum for licensing of mortgage brokers and mortgage bankers from $1000 to $1,250, and for licensing of loan officers and limited loan officers from $50 to $67.50. It also raises the maximum filing fee for branch offices from $100 to $125.

SECTION 2 increases the maximum license renewal fees as follows: for licensed mortgage bankers and mortgage brokers from $500 to $625, and from $100 to $125 per branch; for licensed exclusive mortgage brokers from $500 to $625; and for licensed loan officers or limited loan officer from $50 to

$67.50. This section also establishes a $50 late fee if a loan officer or limited loan officer fails to renew a license prior to its expiration date. The late fee for mortgage bankers and brokers remains at $250.

SECTION 3 creates two new sections in the Mortgage Lending Act. The new G.S. 53-243.17 authorizes the Commissioner of Banks to participate in the formation and operation of a centralized national licensing system and database funded and administered by participating state mortgage regulators. The new section also authorizes the Commissioner to enter into agreements to license the use of proprietary software owned by the Office of Commissioner of Banks to mortgage and financial services supervisory agencies in other states.

The new G.S. 53-243.18 authorizes the Commissioner to direct that fees established in the Mortgage Lending Act be paid to a national mortgage licensing system, agency or enterprise designated by the Commissioner.

SECTION 4 provides that the amount set as the maximum amount for fees in this act shall be the actual amount of the fee until the Banking Commission adopts rules setting the fee at a lower rate.

EFFECTIVE DATE: This act becomes effective October 1, 2006.

S2043e3-SMRO

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: Senate Bill 2043 (First Edition)

SHORT TITLE: Increase Mortgage Lending Fees.

SPONSOR(S): Senator Rand

FISCAL IMPACT

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

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES:					
General Fund		No Impact to General Fund			
OCOB	$1,268,331	$1,596,550	$1,596,550	$1,596,550	$1,596,550
EXPENDITURES:					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Office of the Commissioner of Banks (OCOB)

EFFECTIVE DATE: October 1, 2006

BILL SUMMARY: Senate Bill 2043 increases the amount of various fees assessed by the Office of Commissioner of Banks (OCOB) and makes other changes to G.S. 53-243.05 and G.S. 53-243.06. The bill:

- Increases the base application fee for licensure as a mortgage broker or mortgage banker from $1,000 to $1,500;
- Increases the base application fee for licensure as a loan officer or limited loan officer from $50 to $100;
- Increases the filing fee for issuance of licenses for principal and branch offices of mortgage bankers and brokers from $100 to $150;
- Increases the base renewal fee for licensed mortgage bankers and mortgage brokers from $500 to $750;
- Increases the base renewal fee for branch offices of licensed mortgage bankers and brokers from $100 to $150 each;

- Increases the annual renewal fee for licensed loan officers from $50 to $100;
- Creates a new $100 late fee for failure to timely renew a license for a loan officer or limited loan officer;
- Increases the surety bond requirements for mortgage bankers and brokers from $250,000 to $500,000 and eliminates the option of depositing cash or securities in lieu of a surety bond;
- Increases the net worth required for waiver of the bond requirement for qualified lenders from $250,000 to $500,000; and,
- Provides for the automatic administrative suspension of a license for failure to maintain an active surety bond.

Senate Bill 2043 provides that all fees are payable to the Commissioner of Banks, a national licensing agency, or an enterprise designated by the Commissioner.

ASSUMPTIONS AND METHODOLOGY: The Office of the Commissioner of Banks, together with the North Carolina Banking Commission, is responsible for the chartering and regulation of North Carolina's state banks and trust companies, as well as the registration and licensing of various financial institutions operating in North Carolina, including check cashers, consumer finance companies, mortgage bankers and brokers, money transmitters, and refund anticipation lenders. OCOB charges a variety of statutorily authorized fees for the registration and licensing of various financial institutions.

Senate Bill 2043 increases the following fees by the amount shown in the far right column:

Fee Increases in Senate Bill 2043			
	Current fee	S 2043	Fee Increase
Licensure			
Mortgage broker or banker	$1,000	$1,500	$500
Loan officer or limited loan officer	$50	$100	$50
Filing fee for principal or branch offices of a mortgage broker or banker	$100	$150	$50
Renewal			
Mortgage broker or banker	$500	$750	$250
Branch office	$100	$150	$50
Loan officers	$50	$100	$50
Late renewal fee for loan officers	None	$100	$100

The chart below shows the projected increase in fee revenue anticipated by the Office of the Commissioner of Banks as a result of these changes. Since this bill contains an October 1, 2006, effective date, the fiscal impact of the fee increases will be less than the total amount shown in the column for Senate Bill 2043. OCOB estimates their total collections for FY 2006-07 will be $3,115,000. Fiscal Research estimates that this amount constitutes an increase in total OCOB fee collections of $1,268,331. Beginning in 2007-08, the annual impact of the fee increases is estimated at $1,596,550 annually.

Increase in OCOB Fee Collections under Senate Bill 2043					
	Number	Total under current fee rates	Total S2043 (full year)	Total increase in fee collections	Percent change over current
Renewals					
Mortgage lenders/brokers	1,500	750,000	1,125,000	375,000	50.0%
Branches	1,500	150,000	225,000	75,000	50.0%
Loan officers	12,500	625,000	1,250,000	625,000	100.0%
Exclusive mortgage brokers	400	200,000	300,000	100,000	50.0%
New applications					
Mortgage lenders/brokers	213	213,000	319,500	106,500	50.0%
Branches	1,430	143,000	214,500	71,500	50.0%
Loan officers	4,871	243,550	487,100	243,550	100.0%
Total		**$2,324,550**	**$3,921,100**	**$1,596,550**	**68.7%**

SOURCES OF DATA: Office of the Commissioner of Banks (OCOB)

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Brenna Erford

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: June 20, 2006

Signed Copy Located in the NCGA Principal Clerk's Offices

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☒Committee Substitute for

SB 2043 A BILL TO BE ENTITLED AN ACT TO UPDATE THE MORTGAGE LENDING ACT BY CHANGING THE REGISTRATION FEES FOR MORTGAGE LICENSING AND RENEWAL AND BY AUTHORIZING THE COMMISSIONER TO PARTICIPATE IN A NATIONAL LICENSING SYSTEM AND DATABASE.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 4

HOUSE BILL 1963*

Committee Substitute Favorable 6/5/06
Senate Finance Committee Substitute Adopted 6/30/06
Fourth Edition Engrossed 7/6/06

Short Title: Revenue Laws Tech. & Motor Fuel Tax Changes. (Public)

Sponsors:

Referred to:

May 15, 2006

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES TO THE REVENUE LAWS AND RELATED STATUTES, TO IMPROVE THE COLLECTION AND ADMINISTRATION OF THE MOTOR FUEL TAX, AND TO AUTHORIZE A COUNTY THAT IMPOSES A SALES TAX FOR PUBLIC TRANSPORTATION TO LEVY A VEHICLE RENTAL TAX.

The General Assembly of North Carolina enacts:

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

"**§ 105-113.82. Distribution of part of beer and wine taxes.**

(a) Amount, Method. – The Secretary shall distribute annually the following percentages of the net amount of excise taxes collected on the sale of malt beverages and wine during the preceding 12-month period ending March 31, less the amount of the net proceeds credited to the Department of ~~Agriculture and Consumer Services~~ Commerce under G.S. 105-113.81A, to the counties and cities in which the retail sale of these beverages is authorized in the entire county or city:

(1) Of the tax on malt beverages levied under G.S. 105-113.80(a), twenty-three and three-fourths percent (23¾%);

(2) Of the tax on unfortified wine levied under G.S. 105-113.80(b), sixty-two percent (62%); and

(3) Of the tax on fortified wine levied under G.S. 105-113.80(b), twenty-two percent (22%).

If malt beverages, unfortified wine, or fortified wine may be licensed to be sold at retail in both a county and a city located in the county, both the county and city shall receive a portion of the amount distributed, that portion to be determined on the basis of population. If one of these beverages may be licensed to be sold at retail in a city located in a county in which the sale of the beverage is otherwise prohibited, only the city shall receive a portion of the amount distributed, that portion to be determined on

the basis of population. The amounts distributed under subdivisions (1), (2), and (3) shall be computed separately."

SECTION 2. G.S. 105-122(d) reads as rewritten:

"(d) After determining the proportion of its total capital stock, surplus and undivided profits as set out in subsection (c) of this section, which amount ~~so determined~~ shall ~~in no case~~ not be less than fifty-five percent (55%) of the appraised value as determined for ad valorem taxation of all the real and tangible personal property in this State of each ~~such~~ corporation ~~plus the total appraised value of intangible property returned for taxation of intangible personal property as herein specified~~ nor less than its total actual investment in tangible property in this State, every corporation taxed under this section shall annually pay to the Secretary of Revenue, at the time the report and statement are due, a franchise or privilege ~~tax, which is hereby levied~~ tax at the rate of one dollar and fifty cents ($1.50) per one thousand dollars ($1,000) of the total amount of capital stock, surplus and undivided profits as ~~herein provided.~~ provided in this section. The tax imposed in this section shall ~~in no case~~ not be less than thirty-five dollars ($35.00) and shall be for the privilege of carrying on, doing business, and/or the continuance of articles of incorporation or domestication of each ~~such~~ corporation in this State. Appraised value of tangible property including real estate ~~shall be~~ is the ad valorem valuation for the calendar year next preceding the due date of the franchise tax return. ~~Appraised value of intangible property shall be the total gross valuation required to be reported for intangible tax purposes on April 15 coincident with or next preceding the due date of the franchise tax return.~~ The term "total actual investment in tangible property" as used in this section ~~shall be construed to mean~~ means the total original purchase price or consideration to the reporting taxpayer of its tangible properties, including real estate, in this State plus additions and improvements thereto less reserve for depreciation as permitted for income tax purposes, and also less any indebtedness incurred and existing by virtue of the purchase of any real estate and any permanent improvements made thereon. In computing "total actual investment in tangible personal property" there shall also be deducted reserves for the entire cost of any air-cleaning device or sewage or waste treatment plant, including waste lagoons, and pollution abatement equipment purchased or constructed and installed which reduces the amount of air or water pollution resulting from the emission of air contaminants or the discharge of sewage and industrial wastes or other polluting materials or substances into the outdoor atmosphere or into streams, lakes, or rivers, upon condition that the corporation claiming ~~such~~ this deduction shall furnish to the Secretary a certificate from the Department of Environment and Natural Resources or from a local air pollution control program for air-cleaning devices located in an area where the Environmental Management Commission has certified a local air pollution control program pursuant to G.S. 143-215.112 certifying that said Department or local air pollution control program has found as a fact that the air-cleaning device, waste treatment plant or pollution abatement equipment purchased or constructed and installed as above described has actually been constructed and installed and that ~~such~~ the device, plant or equipment complies with the requirements of the Environmental Management Commission or local air pollution control program with respect to ~~such~~ the devices,

plants or equipment, that ~~such~~ the device, plant or equipment is being effectively operated in accordance with the terms and conditions set forth in the permit, certificate of approval, or other document of approval issued by the Environmental Management Commission or local air pollution control program and that the primary purpose ~~thereof~~ is to reduce air or water pollution resulting from the emission of air contaminants or the discharge of sewage and waste and not merely incidental to other purposes and functions. The cost of constructing facilities of any private or public utility built for the purpose of providing sewer service to residential and outlying areas ~~shall be~~ is treated as deductible for the purposes of this section; the deductible liability allowed by this section shall apply only with respect to ~~such~~ pollution abatement plants or equipment constructed or installed on or after January 1, 1955."

SECTION 3.(a) G.S. 105-130.2 reads as rewritten:

"...

(4a) Gross income. – Defined in section 61 of the Code.

~~(4a)~~(4b) Income year. – The calendar year or the fiscal year upon the basis of which the net income is computed under this Part. If no fiscal year has been established, the income year is the calendar year. In the case of a return made for a fractional part of a year under the provisions of this Part or under rules adopted by the Secretary, the income year is the period for which the return is made.

..."

SECTION 3.(b) G.S. 105-114(b)(4) reads as rewritten:

"(4) Income year. – Defined in G.S. ~~105-130.2(5).~~105-130.2(4b)."

SECTION 4.(a) G.S. 105-130.47(a) reads as rewritten:

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

(1) Highly compensated individual. – An individual who directly or indirectly receives compensation in excess of one million dollars ($1,000,000) for personal services with respect to a single production. An individual receives compensation indirectly when a production company pays a personal service company or an employee leasing company that pays the individual.

(2) Live sporting event. – A scheduled sporting competition, game, or race that is not originated by a production company, but originated solely by an amateur, collegiate, or professional organization, institution, or association for live or tape-delayed television or satellite broadcast. A live sporting event ~~shall~~ does not include commercial advertising, an episodic television series, a television pilot, a music video, a motion picture, or a documentary production ~~where any~~in which sporting events are presented through archived historical footage or similar footage ~~depicting earlier live sporting events that originated more than thirty days before the time of such usage.~~taken at least 30 days before it is used.

(3) Production company. – Defined in G.S. 105-164.3.

(4) Qualifying expenses. – The sum of the ~~total amount~~following amounts spent in this State ~~for the following~~ by a production company in connection with a ~~production:~~production, less the amount paid to a highly compensated individual:

a. Goods and services leased or ~~purchased by the production company.~~purchased. For goods with a purchase price of twenty-five thousand dollars ($25,000) or more, the amount included in qualifying expenses is the purchase price less the fair market value of the good at the time the production is completed.

b. Compensation and ~~wages paid by the production company, other than amounts paid to a highly compensated individual,~~ wages on which ~~the production company remitted~~ withholding payments are remitted to the Department of Revenue under Article 4A of this Chapter."

SECTION 4.(b) G.S. 105-151.29(a) reads as rewritten:

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

(1) Highly compensated individual. – An individual who directly or indirectly receives compensation in excess of one million dollars ($1,000,000) for personal services with respect to a single production. An individual receives compensation indirectly when a production company pays a personal service company or an employee leasing company that pays the individual.

(2) Live sporting event. – A scheduled sporting competition, game, or race that is not originated by a production company, but originated solely by an amateur, collegiate, or professional organization, institution, or association for live or tape-delayed television or satellite broadcast. A live sporting event ~~shall~~ does not include commercial advertising, an episodic television series, a television pilot, a music video, a motion picture, or a documentary production ~~where any~~in which sporting events are presented through archived historical footage or similar footage ~~depicting earlier live sporting events that originated more than thirty days before the time of such usage.~~taken at least 30 days before it is used.

(3) Production company. – Defined in G.S. 105-164.3.

(4) Qualifying expenses. – The sum of the ~~total amount~~following amounts spent in this State ~~for the following~~ by a production company in connection with a ~~production:~~production, less the amount paid to a highly compensated individual:

a. Goods and services leased or ~~purchased by the production company.~~purchased. For goods with a purchase price of twenty-five thousand dollars ($25,000) or more, the amount included in qualifying expenses is the purchase price less the

fair market value of the good at the time the production is completed.

b. Compensation and ~~wages paid by the production company, other than amounts paid to a highly compensated individual,~~wages on which ~~the production company remitted~~ withholding payments are remitted to the Department of Revenue under Article 4A of this Chapter."

SECTION 4.(c) G.S. 105-259(b) reads as rewritten:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

...

(27) To ~~publish the information required under G.S. 105-129.6, 105-129.19, 105-129.26, 105-129.38, 105-129.44, 105-129.65A, 105-130.41, 105-130.45, 105-151.22, and 105-164.14.~~provide a report required under this Chapter.

...

(30) **(Effective for business activities occurring on or after May 1, 2005)** To ~~publish the information required under G.S. 105-129.54 and to~~ prove that a business does not meet the definition of "small business" under Article 3F of this Chapter because the annual receipts of the business, combined with the annual receipts of all related persons, exceeds the applicable amount.

...

~~(32) To provide the report required under G.S. 105-164.14(c) to the Department of Public Instruction and the Fiscal Research Division of the General Assembly.~~

...

(34) **(Effective for taxable years on or after January 1, 2005)** To exchange information concerning a tax credit claimed under G.S. 105-130.47 or G.S. 105-151.29 with the North Carolina Film Office of the Department of Commerce and with the regional film ~~commissions and to publish the reports required under those sections.~~commissions.

...

(36) To furnish to a taxpayer claiming a credit under G.S. 105-130.47 or G.S. 105-151.29 information used by the Secretary to adjust the amount of the credit claimed by the taxpayer.

..."

SECTION 5.(a) G.S. 105-164.3(49) reads as rewritten:

"(49) Use. – ~~Means and includes the~~ The exercise of any ~~right or power~~ right, power, or dominion whatsoever over tangible personal property or a service by ~~a~~ the purchaser ~~thereof and includes, but is not limited~~

~~to, any~~ of the property or service. The term includes withdrawal from storage, distribution, installation, affixation to real or personal property, ~~or~~ and exhaustion or consumption of the tangible personal property or service by the owner or ~~purchaser thereof, but~~ purchaser. The term does not include the sale of tangible personal property or a service in the regular course of business."

SECTION 5.(b) G.S. 105-164.16(a) reads as rewritten:

"(a) General. – Sales and use taxes are payable quarterly, monthly, or semimonthly as specified in this section. A return is due quarterly or monthly as specified in this section. A return must be filed with the Secretary on a form prescribed by the Secretary and in the manner required by the Secretary. A return must be signed by the taxpayer or the taxpayer's agent.

A sales tax return must state the taxpayer's gross sales for the reporting period, the amount and type of sales made in the period that are exempt from tax under G.S. 105-164.13 or are elsewhere excluded from tax, the amount of tax due, and any other information required by the Secretary. A use tax return must state the purchase price of tangible personal property or services that ~~was~~ were purchased or received during the reporting period and ~~is~~ are subject to tax under G.S. 105-164.6, the amount of tax due, and any other information required by the Secretary. Returns that do not contain the required information will not be accepted. When an unacceptable return is submitted, the Secretary will require a corrected return to be filed."

SECTION 6. G.S. 105-164.6(c) reads as rewritten:

"(c) Credit. – A credit is allowed against the tax imposed by this section for the following:

(1) The amount of sales or use tax paid on the item to this State. Payment of sales or use tax to this State on an item by a retailer extinguishes the liability of a purchaser for the tax imposed under this section.

(2) The amount of sales or use tax paid on the item to another state. If the amount of tax paid to the other state is less than the amount of tax imposed by this section, the difference is payable to this State. The credit allowed by this subdivision does not apply to tax paid to a state that does not grant a similar credit for sales or use taxes paid in North Carolina."

SECTION 7. G.S. 105-164.7 reads as rewritten:

"§ 105-164.7. Sales tax part of purchase price.

Every retailer subject to the tax levied in G.S. 105-164.4 shall at the time of selling or delivering or taking an order for the sale or delivery of taxable tangible personal property or a taxable service, or collecting the sales price, add to the sales price the amount of tax due. The tax constitutes a part of the purchase price, is a debt from the purchaser to the retailer until paid, and is recoverable at law in the same manner as other debts. The tax must be stated and charged separately from the sales price, shown separately on the retailer's sales records, and paid by the purchaser to the retailer as trustee for and on account of the State. The retailer is liable for the collection of the tax and for its payment to the Secretary. The retailer's failure to charge the tax to or to

collect the tax from the purchaser does not affect this liability. It is the intent of this Article that the tax be added to the sales price of tangible personal property and services when sold at retail and be borne and passed on to the customer, instead of being borne by the retailer."

SECTION 8.(a) G.S. 105-164.13(1a) reads as rewritten:

"(1a) Sales of the following to a farmer, as defined in subdivision (1) of this section:

a. A container ~~sold to a farmer, as defined in subdivision (1) of this section,~~ used for a purpose set out in ~~that~~ subdivision (1) of this section or in packaging and transporting the farmer's product for sale.

b. A grain, feed, or soybean storage facility, and parts and accessories attached to the facility."

SECTION 8.(b) G.S. 105-164.13(4e) is repealed.

SECTION 9. G.S. 105-164.14(k) reads as rewritten:

"(k) Reports. – The Department of Revenue shall publish by May 1 of each year the following information itemized by taxpayer for the 12-month period ending the preceding December 31:

(1) The number of taxpayers claiming a refund allowed in subsections (a1), (g), (h), (i), ~~and (j)~~(j), and (l) of this section.

(2) The total amount of purchases with respect to which refunds were claimed.

(3) The total cost to the General Fund of the refunds claimed."

SECTION 10. G.S. 105-164.15A reads as rewritten:

"**§ 105-164.15A. Effective date of rate changes for services.**

The effective date of a rate change for a service taxable under this Article is administered as follows:

(1) For a rate increase, the new rate applies to the first billing period that starts on or after the effective date. For a service billed after it is provided, the first billing period starts on the effective date. For a service billed before it is provided, the first billing period starts on the first day of the month after the effective date.

(2) For a rate decrease, the new rate applies to bills rendered on or after the effective date."

SECTION 11. G.S. 105-187.52 reads as rewritten:

"**§ 105-187.52. Administration.**

(a) Administration. – The privilege taxes imposed by this Article are in addition to the State use tax. Except as otherwise provided in this Article, the collection and administration of these taxes is the same as the State use tax imposed by Article 5 of this Chapter.

(b) Credit. – A credit is allowed against the tax imposed by this Article for the amount of a sales or use tax, privilege or excise tax, or substantially equivalent tax paid to another state. The credit allowed by this subsection does not apply to tax paid to

another state that does not grant a similar credit for the privilege tax paid in North Carolina."

SECTION 12.(a) G.S. 105-233 and G.S. 105-234 are repealed.

SECTION 12.(b) G.S. 105-236 reads as rewritten:

"**§ 105-236. ~~Penalties.~~Penalties; situs of violations; penalty disposition.**

(a) Penalties. – ~~Penalties assessed by the Secretary under this Subchapter are assessed as an additional tax. The clear proceeds of any civil penalties levied pursuant to subdivisions (3), (4), (5)a., and (6) of this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Except as otherwise provided by law, and subject to the provisions of G.S. 105-237, the following penalties shall be applicable:~~The following civil penalties and criminal offenses apply:

(1) Penalty for Bad Checks. – When the bank upon which any uncertified check tendered to the Department of Revenue in payment of any obligation due to the Department returns the check because of insufficient funds or the nonexistence of an account of the drawer, the Secretary shall assess a penalty equal to ten percent (10%) of the check, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). This penalty does not apply if the Secretary finds that, when the check was presented for payment, the drawer of the check had sufficient funds in an account at a financial institution ~~in this State~~ to pay the check and, by inadvertence, the drawer of the check failed to draw the check on the account that had sufficient funds.

...

~~(11) Any violation of Subchapter I, V, or VIII of this Chapter or of Article 3 of Chapter 119 of the General Statutes is considered an act committed in part at the office of the Secretary in Raleigh. The certificate of the Secretary that a tax has not been paid, a return has not been filed, or information has not been supplied, as required by law, is prima facie evidence that the tax has not been paid, the return has not been filed, or the information has not been supplied.~~

(12) Repealed by Session Laws 1991, c. 45, s. 27.

(b) Situs. – Violation of a tax law is considered an act committed in part at the office of the Secretary in Raleigh. The certificate of the Secretary that a tax has not been paid, a return has not been filed, or information has not been supplied, as required by law, is prima facie evidence that the tax has not been paid, the return has not been filed, or the information has not been supplied.

(c) Penalty Disposition. – Civil penalties assessed by the Secretary are assessed as an additional tax. The clear proceeds of civil penalties assessed by the Secretary must be credited to the Civil Penalty and Forfeiture Fund established in G.S. 115C-457.1."

SECTION 12.(c) G.S. 105-449.48 and G.S. 105-449.127 are repealed.

SECTION 12.(d) G.S. 105-449.49 reads as rewritten:

"**§ 105-449.49. Temporary permits.**

(a) Issuance. – Upon application to the Secretary and payment of a fee of fifty dollars ($50.00), a motor carrier may obtain a temporary permit authorizing the carrier to operate a vehicle in the State for three days without registering the vehicle in accordance with G.S. ~~105-449.47 for not more than three days.~~ 105-449.47. A motor carrier to whom a temporary permit has been issued may elect not to report its operation of the vehicle during the three-day period. Fees collected under this subsection are credited to the Highway Fund.

(b) Refusal. – The Secretary may refuse to issue a temporary permit to any of the following:

(1) A motor carrier whose registration has been withheld or revoked.

(2) A motor carrier who the Secretary determines is evading payment of tax through the successive purchase of temporary permits."

SECTION 13.(a) G.S. 105-449.65(b) reads as rewritten:

"(b) Multiple Activity. – A person who is engaged in more than one activity for which a license is required must have a separate license for each activity, unless this subsection provides otherwise. A person who is licensed as a supplier is considered to have a license as a distributor. A person who is licensed as an occasional importer or a tank wagon importer is not required to obtain a separate license as a distributor unless the importer is also purchasing motor fuel, at the terminal rack, from an elective or permissive supplier who is authorized to collect and remit the tax to the State. A person who is licensed as a distributor is not required to obtain a separate license as an importer if the distributor acquires fuel for import only from an elective supplier or a permissive supplier and is not required to obtain a separate license as an exporter. A person who is licensed as a distributor or a blender ~~is not required to obtain a separate license~~ and who transports fuel is considered to be licensed as a motor fuel ~~transporter if the distributor or blender does not transport motor fuel for others for hire.~~transporter."

SECTION 13.(b) G.S. 105-449.101 reads as rewritten:

"§ 105-449.101. Motor fuel transporter to file informational return showing deliveries of ~~imported or exported~~ motor fuel.

(a) Requirement. – A motor fuel transporter ~~that imports motor fuel into this State or exports motor fuel from this State~~ must file a monthly informational return with the Secretary that shows motor fuel ~~received or delivered for import or export~~ transported in this State by the transporter during the month. ~~This requirement does not apply to a distributor that is not required to be licensed as a motor fuel transporter.~~

(b) Content. – The return required by this section is due by the 25th day of the month following the month covered by the return. The return must contain the following information and any other information required by the Secretary:

(1) The name and address of each person from whom the transporter received motor fuel outside the State for delivery in the State, the amount of motor fuel received, the date the motor fuel was received, and the destination state of the fuel.

(2) The name and address of each person from whom the transporter received motor fuel in the State for delivery outside the State, the

amount of motor fuel delivered, the date the motor fuel was delivered, and the destination state of the fuel.

(3) The name and address of each person from whom the transporter received motor fuel in the State for delivery in the State, the amount of motor fuel received, the date the motor fuel was received, and the destination state of the fuel."

SECTION 14.(a) G.S. 105-449.60 is amended by adding a new subdivision to read:

"**§ 105-449.60. Definitions.**

The following definitions apply in this Article:

...

(10a) Exempt card or code. – A credit card or an access code that enables the person to whom the card or code is issued to buy motor fuel at retail without paying the motor fuel excise tax on the fuel."

SECTION 14.(b) G.S. 105-449.88A reads as rewritten:

"**§ 105-449.88A. Liability for tax due on motor fuel designated as exempt by the use of cards or codes.**

~~(a) Exempt Cards at Rack. – When a licensed distributor or licensed importer removes motor fuel from a terminal by means of an exempt card or exempt access code issued by the supplier, the distributor or importer represents that the fuel removed will be resold to a governmental unit that is exempt from the tax. A supplier may rely on this representation. A licensed distributor or licensed importer that does not resell motor fuel removed from a terminal by means of an exempt card or exempt access code to an exempt governmental unit is liable for any tax due on the fuel.~~

(b) Exempt ~~Cards at Retail.~~ Card or Code. – ~~An "exempt card or code" is a credit card or an access code that enables the person to whom the card or code is issued to buy motor fuel at retail without paying the motor fuel excise tax on the fuel.~~ An entity that issues an exempt card or code has a duty to determine if the person to whom it is issued is exempt from the motor fuel excise tax. An entity that issues an exempt card or code to a person who is not exempt from tax is liable for tax due on motor fuel the person purchases at retail by use of the exempt card or code. If a supplier authorizes another entity to issue an exempt card or code to a person who is not exempt from tax, the supplier and the entity that issued the card are jointly and severally liable for tax due on motor fuel the person purchases at retail by use of the exempt card or code.

(c) Card Holder. – A person to whom an exempt card or ~~exempt access card~~ code is issued ~~for use at a terminal or at retail~~ is liable for any tax due on fuel purchased with the card or code for a purpose that is not exempt. A person who misuses an exempt card or code by purchasing fuel with the card or code for a purpose that is not exempt is liable for the tax due on the fuel."

SECTION 14.(c) G.S. 105-449.90 reads as rewritten:

"**§ 105-449.90. When tax return and payment are due.**

(a) Filing Periods. – The excise tax imposed by this Article is payable when a return is due. A return is due ~~annually, quarterly,~~annually or monthly, as specified in

this section. A return must be filed with the Secretary and be in the form required by the Secretary.

An annual return is due within 45 days after the end of each calendar year. An annual return covers tax liabilities that accrue in the calendar year preceding the date the return is due.

~~A quarterly return is due by the last day of the month that follows the end of a calendar quarter. A quarterly return covers tax liabilities that accrue in the calendar quarter preceding the date the return is due.~~

A monthly return of a person other than an occasional importer is due within 22 days after the end of each month. A monthly return of an occasional importer is due by the 3rd of each month. A monthly return covers tax liabilities that accrue in the calendar month preceding the date the return is due.

(b) Annual Filers. – A terminal operator must file an annual return for the compensating tax imposed by G.S. 105-449.85.

~~(c) Quarterly Filers. – A licensed importer that removes fuel at a terminal rack of a permissive or an elective supplier and a licensed distributor must file a quarterly return under G.S. 105-449.94 to reconcile exempt sales.~~

(d) Monthly Filers on 22nd. – The following persons must file a monthly return by the 22nd of each month:

(1) A refiner.
(2) A supplier.
(3) A bonded importer.
(4) A blender.
(5) A tank wagon importer.
(6) A person that incurred a liability under G.S. 105-449.86 during the preceding month for the tax on dyed diesel fuel used to operate certain highway vehicles.
(7) A person that incurred a liability under G.S. 105-449.87 during the preceding month for the backup tax on motor fuel.

(e) Monthly Filers on 3rd. – An occasional importer must file a monthly return by the third day of each month. An occasional importer is not required to file a return, however, if all the motor fuel imported by the importer in a reporting period was removed at a terminal located in another state and the supplier of the fuel is an elective supplier or a permissive supplier. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 23; 1997-60, s. 11.)"

SECTION 14.(d) G.S. 105-449.93 reads as rewritten:

"**§ 105-449.93. ~~Exempt sale deduction and percentage~~ Percentage discount for licensed distributors and some licensed importers.**

~~(a) Deduction. – A license holder listed below may deduct from the amount of tax otherwise payable to a supplier the amount calculated on motor fuel the license holder received from the supplier and resold to a governmental unit whose purchases of motor fuel are exempt from the tax under G.S. 105-449.88 if, when removing the fuel, the license holder used an access card or code specified by the supplier to notify the supplier of the license holder's intent to resell the fuel in an exempt sale:~~

~~(1) A licensed distributor.~~

~~(2) A licensed importer that removed the motor fuel from a terminal rack of a permissive or an elective supplier.~~

(b) Percentage Discount. – A licensed distributor that pays the tax due a supplier by the date the supplier must pay the tax to the State may deduct from the amount due a discount of one percent (1%) of the amount of tax payable. A licensed importer that removes motor fuel from a terminal rack of a permissive or an elective supplier and that pays the tax due the supplier by the date the supplier must pay the tax to the State may deduct from the amount due a discount of the same amount allowed a licensed distributor. The discount covers the expense of furnishing a bond and losses due to shrinkage or evaporation. A supplier may not directly or indirectly deny this discount to a licensed distributor or licensed importer that pays the tax due the supplier by the date the supplier must pay the tax to the State."

SECTION 14.(e) G.S. 105-449.94 is repealed.

SECTION 14.(f) G.S. 105-449.97(d) reads as rewritten:

"(d) Taxes Paid on Exempt Retail Sales. – When filing a return, a supplier that issues or authorizes the issuance of an exempt card or ~~an exempt access~~ code to a person that enables the person to buy motor fuel ~~at retail~~ without paying tax on the fuel may deduct the amount of excise tax imposed on fuel purchased with the exempt ~~retail~~ card or code. The amount of excise tax imposed on fuel purchased ~~at retail~~ with an exempt ~~retail~~ card or code is the amount that was imposed on the fuel when it was delivered to the retailer of the fuel."

SECTION 14.(g) G.S. 105-449.105A(a) reads as rewritten:

"(a) Refund. – A distributor who sells kerosene to any of the following may obtain a refund for the excise tax the distributor paid on the kerosene, less the amount of any discount allowed on the kerosene under G.S. 105-449.93:

(1) The end user of the kerosene, if the distributor dispenses the kerosene into a storage facility of the end user that contains fuel used only for one of the following purposes and the storage facility is installed in a manner that makes use of the fuel for any other purpose improbable:
   a. Heating.
   b. Drying crops.
   c. A manufacturing process.

(2) A retailer of kerosene, if the distributor dispenses the kerosene into a storage facility that meets both of the following conditions:
   a. It is marked with the phrase "Undyed, Untaxed Kerosene, Nontaxable Use Only" or a similar phrase that clearly indicates that the fuel is not to be used to operate a highway vehicle.
   b. It either has a dispensing device that is not suitable for use in fueling a highway vehicle or is kept locked by the retailer and must be unlocked by the retailer for each sale of kerosene.

(3) An airport, if the distributor dispenses the kerosene into a storage facility that contains fuel used only for fueling airplanes and that meets at least one of the following conditions:

a. It is marked with the phrase "Undyed, Untaxed Kerosene, Nontaxable Use Only" or a similar phrase that clearly indicates that the fuel is not to be used to operate a highway vehicle.

b. It has a dispensing device that is not suitable for use in fueling a highway vehicle."

SECTION 15.(a) G.S. 105-449.100 reads as rewritten:

"**§ 105-449.100. Terminal operator to file informational return showing changes in amount of motor fuel at the terminal.**

A terminal operator must file a monthly informational return with the Secretary that shows the amount of motor fuel received or removed from the terminal during the month. The return is due ~~by the 25th day of the month following the month covered by the return.~~ on the same date as a monthly return due under G.S. 105-449.90. The return must contain the following information and any other information required by the Secretary:

(1) The number of gallons of motor fuel received in inventory at the terminal during the month and each position holder for the fuel.

(2) The number of gallons of motor fuel removed from inventory at the terminal during the month and, for each removal, the position holder for the fuel and the destination state of the fuel.

(3) The number of gallons of motor fuel gained or lost at the terminal during the month."

SECTION 15.(b) G.S. 105-449.101 reads as rewritten:

"**§ 105-449.101. Motor fuel transporter to file informational return showing deliveries of imported or exported motor fuel.**

(a) Requirement. – A motor fuel transporter that imports motor fuel into this State or exports motor fuel from this State must file a monthly informational return with the Secretary that shows motor fuel received or delivered for import or export by the transporter during the month. This requirement does not apply to a distributor that is not required to be licensed as a motor fuel transporter.

(b) Content. – The return required by this section ~~is due by the 25th day of the month following the month covered by the return. The return~~ must contain the following information and any other information required by the Secretary:

(1) The name and address of each person from whom the transporter received motor fuel outside the State for delivery in the State, the amount of motor fuel received, the date the motor fuel was received, and the destination state of the fuel.

(2) The name and address of each person from whom the transporter received motor fuel in the State for delivery outside the State, the amount of motor fuel delivered, the date the motor fuel was delivered, and the destination state of the fuel.

(c) Due Date. – The return required by this section is due on the same date as a monthly return due under G.S. 105-449.90."

SECTION 15.(c) G.S. 105-449.102(a) reads as rewritten:

"(a) Return. – A distributor that exports motor fuel from a bulk plant located in this State must file a monthly return with the Secretary that shows the exports. The return is due ~~by the 25th day of the month following the month covered by the return.~~ on the same date as a monthly return due under G.S. 105-449.90. The return serves as a claim for refund by the distributor for tax paid to this State on the exported motor fuel."

SECTION 15.(d) G.S. 105-449.137(b) reads as rewritten:

"(b) Payment. – The tax imposed by this Article is payable when a return is due. A return is due ~~monthly within 25 days after the end of each month.~~ on the same date as a monthly return due under G.S. 105-449.90. A monthly return covers liabilities that accrue in the calendar month preceding the date the return is due. A return must be filed with the Secretary and must be in the form and contain the information required by the Secretary."

SECTION 15.(e) G.S. 119-18(a) reads as rewritten:

"(a) Tax. – An inspection tax of one fourth of one cent (1/4 of 1¢) per gallon is levied upon all of the fuel listed in this subsection regardless of whether the fuel is exempt from the per-gallon excise tax imposed by Article 36C or 36D of Chapter 105 of the General Statutes. The inspection tax on motor fuel is due and payable to the Secretary of Revenue at the same time that the per gallon excise tax on motor fuel is due and payable under Article 36C of Chapter 105 of the General Statutes. The inspection tax on alternative fuel is due and payable to the Secretary of Revenue at the same time that the excise tax on alternative fuel is due and payable under Article 36D of Chapter 105 of the General Statutes. The inspection tax on kerosene is payable monthly to the Secretary by a supplier that is licensed under Part 2 of Article 36C of Chapter 105 of the General Statutes and by a kerosene supplier. A monthly report is due ~~by the 22nd of each month~~ on the same date as a monthly return due under G.S. 105-449.90 and applies to kerosene sold during the preceding month by a supplier licensed under that Part and to kerosene received during the preceding month by a kerosene supplier. A kerosene terminal operator must file a return in accordance with the provisions of ~~G.S. 105-449.100.~~G.S. 105-449.90.

(1) Motor fuel.

(2) Alternative fuel used to operate a highway vehicle.

(3) Kerosene."

SECTION 16.(a) G.S. 105-449.106(c) reads as rewritten:

"(c) Special Mobile Equipment. – A person who purchases and uses motor fuel to operate special mobile equipment off-highway may receive a quarterly refund, for the excise tax paid during the preceding quarter, at a rate equal to the flat cents-per-gallon rate plus the variable cents-per-gallon rate in effect during the quarter for which the refund is claimed, less the amount of sales and use tax or privilege tax due on the fuel under this Chapter, as determined in accordance with G.S. 105-449.107(c). An application for a refund must be made in accordance with this Part."

SECTION 16.(b) G.S. 105-449.107 reads as rewritten:

"**§ 105-449.107. Annual refunds for off-highway use and use by certain vehicles with power attachments.**

(a) Off-Highway. – A person who purchases and uses motor fuel for a purpose other than to operate a licensed highway vehicle may receive an annual refund for the excise tax the person paid on fuel used during the preceding calendar year. The amount of refund allowed is the amount of the flat cents-per-gallon rate in effect during the year for which the refund is claimed plus the average of the two variable cents-per-gallon rates in effect during that year, less the amount of sales and use tax or privilege tax due on the fuel under this Chapter. An application for a refund allowed under this section must be made in accordance with this Part.

(b) Certain Vehicles. – A person who purchases and uses motor fuel in one of the vehicles listed below may receive an annual refund for the amount of fuel consumed by the vehicle:

(1) A concrete mixing vehicle.
(2) A solid waste compacting vehicle.
(3) A bulk feed vehicle that delivers feed to poultry or livestock and uses a power takeoff to unload the feed.
(4) A vehicle that delivers lime or fertilizer in bulk to farms and uses a power takeoff to unload the lime or fertilizer.
(5) A tank wagon that delivers alternative fuel, as defined in G.S. 105-449.130, or motor fuel or another type of liquid fuel into storage tanks and uses a power takeoff to make the delivery.
(6) A commercial vehicle that delivers and spreads mulch, soils, composts, sand, sawdust, and similar materials and that uses a power takeoff to unload, blow, and spread the materials.
(7) A commercial vehicle that uses a power takeoff to remove and dispose of septage and for which an annual fee is required to be paid to the Department of Environment and Natural Resources under G.S. 130A-291.1.
(8) A sweeper.

The amount of refund allowed is thirty-three and one-third percent (33 1/3%) of the following: the sum of the flat cents-per-gallon rate in effect during the year for which the refund is claimed and the average of the two variable cents-per-gallon rates in effect during that year, less the amount of sales and use tax or privilege tax due on the fuel under this Chapter. An application for a refund allowed under this section must be made in accordance with this Part. This refund is allowed for the amount of fuel consumed by the vehicle in its mixing, compacting, or unloading operations, as distinguished from propelling the vehicle, which amount is considered to be one-third of the amount of fuel consumed by the vehicle.

(c) Sales Tax Amount. – Article 5 of this Chapter determines the amount of sales and use tax to be deducted under this section from a motor fuel excise tax refund. Article 5F of this Chapter determines the amount of privilege tax to be deducted under this section from a motor fuel excise tax refund. The sales price and the cost price of motor fuel to be used in determining the amount to deduct is the average of the wholesale prices used under G.S. 105-449.80 to determine the excise tax rates in effect for the two six-month periods of the year for which the refund is claimed."

SECTION 17. G.S. 105-449.120(a)(3a) is repealed.

SECTION 18. The catch line of G.S. 105-249.2 reads as rewritten:

"**§ 105-249.2. Due date extended and penalties waived for certain military personnel or ~~individuals~~ persons affected by a presidentially declared disaster.**"

SECTION 19. The catch line of G.S. 143B-437.71 reads as rewritten:

"**§ 143B-437.71. One North Carolina Fund established as a ~~nonreverting account.~~special revenue fund.**"

SECTION 20.(a) G.S. 153A-155(d) reads as rewritten:

"(d) Administration. – The taxing county shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the county finance officer in monthly installments on or before the ~~15th~~20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 20th day of each month, prepare and render a return on a form prescribed by the taxing county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the county finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1."

SECTION 20.(b) G.S. 160A-215(d) reads as rewritten:

"(d) Administration. – The taxing city shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the city finance officer in monthly installments on or before the ~~15th~~20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 20th day of each month, prepare and render a return on a form prescribed by the taxing city. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the city finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1."

SECTION 21. G.S. 160A-49(f2) reads as rewritten:

"(f2) Effective Date of Annexation for Certain Property. – Annexation of property subject to annexation under subsection (f1) of this section shall become effective:

(1) Upon the effective date of the annexation ordinance, the property is considered part of the city only (i) for the purpose of establishing city boundaries for additional annexations pursuant to this Article and (ii) for the exercise of city authority pursuant to Article 19 of this Chapter.

(2) For all other purposes, the annexation becomes effective as to each tract of such property or part thereof on the last day of the month in which that tract or part thereof becomes ineligible for classification pursuant to ~~G.S. 105-227.4~~ G.S. 105-277.4 or no longer meets the requirements of subdivision (f1)(2) of this section. Until annexation of a tract or a part of a tract becomes effective pursuant to this subdivision, the tract or part of a tract is not subject to taxation by the city under Article 12 of Chapter 105 of the General Statutes nor is the tract or part of a tract entitled to services provided by the city."

SECTION 22. The introductory language for Section 59.2(a) of S.L. 2005-435 reads as rewritten:

"**SECTION 59.2.(a)** ~~G.S. 105-114.1(a4)~~ G.S. 105-114(a4) reads as rewritten:".

SECTION 23. The introductory language of Section 4 of S.L. 2005-413 reads as rewritten:

"**SECTION 4.** ~~G.S. 105-129.15(7) reads~~ Subdivisions (6) and (7) of G.S. 105-129.15 read as rewritten:".

SECTION 24. Section 1(a) of S.L. 2005-261 reads as rewritten:

"**SECTION 1.(a)** Authority; Vote. – If the majority of those voting on the question pursuant to this section vote for the levy of the tax, the Monroe City Council may, by ordinance, levy a prepared food and beverages tax of up to one percent (1%) of the sales price of prepared food and beverages sold within the City of Monroe at retail for consumption on or off the premises by a retailer subject to sales tax under G.S. ~~105-164(a)(1).~~105-164.4(a)(1). This tax is in addition to State and local sales tax.

The Monroe City Council may direct the county board of elections to submit to the qualified voters of the city during any election held in 2006 the question of whether to levy a local prepared food and beverages tax of one percent (1%) as provided in this section. The election must be held on a date jointly agreed upon by the board of elections and city council and held in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

One percent (1%) local prepared food and beverages tax, in addition to the current local sales and use taxes, to be used for the Civic Center Project for the City of Monroe."

SECTION 25. G.S. 160A-537(d) reads as rewritten:

"(d) Effective Date. – The resolution defining a service district shall take effect at the beginning of a fiscal year commencing after its passage, as determined by the city ~~council.~~council, except that if the governing body in the resolution states that general obligation bonds are anticipated to be authorized for the project, it may make the resolution effective immediately upon its adoption, but no ad valorem tax may be levied for a partial fiscal year."

SECTION 26. G.S. 105-32.2(b) reads as rewritten:

"(b) Amount. – The amount of the estate tax imposed by this section ~~for estates of decedents dying on or after January 1, 2002, is the maximum credit for state death taxes allowed under section 2011 of the Code without regard to the phase-out and termination of that credit under subdivision (b)(2) and subsection (f) of that section and without regard to~~ is the amount of the state death tax credit that, as of December 31, 2001, would have been allowed under section 2011 of the Code against the federal taxable estate. The tax may not exceed the amount of federal estate tax due under the Code. The federal taxable estate and the amount of the federal estate tax due are determined without taking into account the deduction for state death taxes allowed under Section 2058 of the ~~Code.~~ Code and the credits allowed under sections 2011 through 2015 of the Code.

If any property in the estate is located in a state other than North Carolina, the amount of tax payable depends on whether the decedent was a resident of this State at death. If the decedent was a resident of this State at death, the amount of tax due under this section is reduced by the lesser of the amount of the death tax paid the other state or an amount computed by multiplying the credit by a fraction, the numerator of which is the gross value of the estate that has a tax situs in another state and the denominator of which is the value of the decedent's gross estate. If the decedent was not a resident of this State at death, the amount of tax due under this section is an amount computed by multiplying the credit by a fraction, the numerator of which is the gross value of real property that is located in North Carolina plus the gross value of any personal property that has a tax situs in North Carolina and the denominator of which is the value of the decedent's gross estate. For purposes of this section, the gross value of property is its gross value as finally determined in the federal estate tax proceedings."

SECTION 27. G.S. 105-164.14(c) reads as rewritten:

"(c) Certain Governmental Entities. – A governmental entity listed in this subsection is allowed an annual refund of sales and use taxes paid by it under this Article on direct purchases of tangible personal property and services, other than electricity and telecommunications service. Sales and use tax liability indirectly incurred by a governmental entity on building materials, supplies, fixtures, and equipment that become a part of or annexed to any building or structure that is owned or leased by the governmental entity and is being erected, altered, or repaired for use by the governmental entity is considered a sales or use tax liability incurred on direct purchases by the governmental entity for the purpose of this subsection. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the governmental entity's fiscal year. ~~The Secretary shall make an annual report to the Department of Public Instruction and the Fiscal Research Division of the General Assembly by March 1 of the amount of refunds, identified by taxpayer, claimed under subdivisions (2b) and (2c) of this subsection over the preceding year.~~

This subsection applies only to the following governmental entities:

(1) A county.

(2) A city as defined in G.S. 160A-1.

(2a) A consolidated city-county as defined in G.S. 160B-2.

(2b), (2c) Repealed by Session Laws 2005-276, s. 7.51(a), effective July 1, 2005, and applicable to sales made on or after that date.

(3) A metropolitan sewerage district or a metropolitan water district in this State.

(4) A water and sewer authority created under Chapter 162A of the General Statutes.

(5) A lake authority created by a board of county commissioners pursuant to an act of the General Assembly.

(6) A sanitary district.

(7) A regional solid waste management authority created pursuant to G.S. 153A-421.

(8) An area mental health, developmental disabilities, and substance abuse authority, other than a single-county area authority, established pursuant to Article 4 of Chapter 122C of the General Statutes.
(9) A district health department, or a public health authority created pursuant to Part 1A of Article 2 of Chapter 130A of the General Statutes.
(10) A regional council of governments created pursuant to G.S. 160A-470.
(11) A regional planning and economic development commission or a regional economic development commission created pursuant to Chapter 158 of the General Statutes.
(12) A regional planning commission created pursuant to G.S. 153A-391.
(13) A regional sports authority created pursuant to G.S. 160A-479.
(14) A public transportation authority created pursuant to Article 25 of Chapter 160A of the General Statutes.
(14a) A facility authority created pursuant to Part 4 of Article 20 of Chapter 160A of the General Statutes.
(15) A regional public transportation authority created pursuant to Article 26 of Chapter 160A of the General Statutes, or a regional transportation authority created pursuant to Article 27 of Chapter 160A of the General Statutes.
(16) A local airport authority that was created pursuant to a local act of the General Assembly.
(17) A joint agency created by interlocal agreement pursuant to G.S. 160A-462 to operate a public broadcasting television station.
(18) Repealed by Session Laws 2001-474, s. 7, effective November 29, 2001.
(19) Repealed by Session Laws 2001-474, s. 7, effective November 29, 2001.
(20) A constituent institution of The University of North Carolina, but only with respect to sales and use tax paid by it for tangible personal property or services that are eligible for refund under this subsection acquired by it through the expenditure of contract and grant funds.
(21) The University of North Carolina Health Care System.
(22) A regional natural gas district created pursuant to Article 28 of Chapter 160A of the General Statutes."

SECTION 28. G.S. 105-278(a) reads as rewritten:

"(a) Real property designated as a historic ~~structure or site~~ property by a local ordinance adopted pursuant to former G.S. ~~160A-400.7~~ 160A-399.4 or designated as a historic landmark by a local ordinance adopted pursuant to G.S. 160A-400.5 is designated a special class of property under authority of Article V, Sec. 2(2) of the North Carolina Constitution. Property so classified shall be taxed uniformly as a class in each local taxing unit on the basis of fifty percent (50%) of the true value of the property as determined pursuant to G.S. 105-285 and 105-286, or 105-287."

SECTION 29. G.S. 106-452 is repealed.

SECTION 30. Part 3 of S.L. 1997-417 is amended by adding a new section to read:

"**SECTION 3.1.** A county authorized to impose a tax under Article 43 of Chapter 105 of the General Statutes, as enacted by Part 1 of this act, is considered an authority under Article 50 of Chapter 105 of the General Statutes, as enacted by Section 3 of this act, and the board of commissioners of that county is considered the board of trustees of the authority under Article 50. G.S. 105-554 of Article 50 does not apply to the proceeds of a tax imposed by a county considered an authority under this section. The proceeds of a tax imposed by a county considered an authority under this section must be transferred to the largest city in that county operating a public transportation system and used only for financing, constructing, operating, and maintaining a public transportation system. The proceeds may supplant existing funds allocated for a public transportation system. The term 'public transportation system' has the same meaning as defined in G.S. 105-506 of Article 43."

SECTION 31. The prefatory language of Section 10 of S.L. 2006-33 reads as rewritten:

"**SECTION 10.** ~~G.S. 105-113(b)~~ G.S. 105-116(b) reads as rewritten:"

SECTION 32. If Senate Bill 1741, 2005 General Assembly, becomes law, then G.S. 105-467(b), as amended by Section 7.20(a) of that act, reads as rewritten:

"(b) Exemptions and Refunds. – The State exemptions and exclusions contained in G.S. 105-164.13, the State sales and use tax holiday contained in G.S. 105-164.13C, and the State refund provisions contained in G.S. 105-164.14 apply to the local sales and use tax authorized to be levied and imposed under this Article. Except as provided in this subsection, a taxing county may not allow an exemption, exclusion, or refund that is not allowed under the State sales and use tax. A local school administrative unit and a joint agency created by interlocal agreement among local school administrative units pursuant to G.S. 160A-462 to jointly purchase food service-related materials, supplies, and equipment on their behalf is allowed an annual refund of sales and use taxes paid by it under this Article on direct purchases of tangible personal property and services, other than ~~electricity and~~electricity, telecommunications ~~service.~~ service, and ancillary service. Sales and use tax liability indirectly incurred by the entity on building materials, supplies, fixtures, and equipment that become a part of or annexed to any building or structure that is owned or leased by the entity and is being erected, altered, or repaired for use by the entity is considered a sales or use tax liability incurred on direct purchases by the entity for the purpose of this subsection. A request for a refund shall be in writing and shall include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the entity's fiscal year. Refunds applied for more than three years after the due date are barred."

SECTION 33. Section 4 of this act is effective for taxable years beginning on or after January 1, 2006. Section 13 of this act becomes effective July 1, 2007, and applies to motor fuel transported on or after that date. Sections 14, 15, and 17 of this act become effective January 1, 2007, and apply to motor fuel purchased on or after that date. An exempt card or code will not be valid for sales of motor fuel at the terminal rack on or after January 1, 2007. Section 26 of this act is effective when it becomes law

and applies to the estates of decedents dying on or after January 1, 2005. Section 32 of this act becomes effective January 1, 2007. The remainder of this act is effective when it becomes law.

HOUSE BILL 1963:
Revenue Laws Tech. & Motor Fuel Tax Changes

BILL ANALYSIS

Committee:	House Finance	**Date:**	July 10, 2006
Introduced by:	Rep. Luebke	**Summary by:**	Cindy Avrette
Version:	Fourth Edition		Committee Counsel

SUMMARY: House Bill 1963 is in the House Finance Committee for a recommendation on whether the full House should concur in the change made by the Senate. The Senate made the following changes to the bill:

Section	Explanation
4	Rewrites (27) of the confidentiality statute to create a generic exception for reports required by law rather than listing out specific statutes.
25	Allows a municipality to create a municipal service district effective upon the adoption of the resolution creating it, rather than waiting for the first day of the next fiscal year, if general obligation bonds are anticipated to be authorized for the project. However, it provides that no ad valorem tax may be levied for a partial fiscal year.
26	Amends the State estate tax statute by clarifying that State estate tax liability may not exceed federal estate tax liability determined without regard to the deduction for state death taxes or certain federal credits. The Department of Revenue currently interprets the statute as limiting the State estate tax in this way, but the Estate Planning Section of the NC Bar Association has requested that clarifying language be put in the statute. This change will not change the way in which estate tax is calculated.
27	Repeals a reporting requirement related to sales and use tax refunds allowed to local school administrative units. This reporting requirement is unnecessary since the General Assembly changed the law in 2005 to redirect State sales and use tax revenues refundable to LEAs to the State Public School Fund.
28	Corrects an incorrect statutory reference.
29	Repeals G.S. 106-452, which sets the maximum charges for handling and selling tobacco on the floor of tobacco warehouses.
30	Authorizes a county that may impose an additional ½ cent sales and use tax for public transit to also levy a vehicle rental tax. The county must allocate the proceeds of any vehicle rental tax it imposes to the largest city in the county that operates a public transportation system. The city must use the money to finance, construct, operate, and maintain local public transportation systems. Unlike the additional sales tax revenue, the revenue from this tax may be used to supplant and replace existing general fund revenues allocated to public transportation.
31	Corrects an incorrect statutory reference.
32	Conforms the language to changes made by S.L. 2006-33.

H1963e4-SMRB

Jobs and Investment Coming to North Carolina

Wachovia Corporation has an $800 million investment planned for South Tryon Street in Charlotte to include a 46-story office tower, a 250-unit residential condominium complex and various cultural facilities that will be purchased upon completion by the City of Charlotte for use by cultural groups.

The office tower is being constructed in an effort to grow the Wachovia trading floor and will accommodate an additional 1,700 trading jobs at average salaries of half a million dollars or more. Those jobs will generate many support positions as well. **Wachovia is not seeking any incentives for the creation of these jobs.** The three-year construction time frame will provide hundreds of construction jobs and Wachovia has a 20% commitment to the use of small and minority and women owned businesses.

Wachovia's roots will be deepened in North Carolina with the project that could just have easily have been placed in some other major financial center anywhere around the world. The private investment will generate $1.6 billion in direct and $1.1 billion in indirect economic impact for a total of a $2.7 billion economic impact. The project will generate $43 million in direct and $34 million in indirect for a total of **$74M in State revenues annually**.

Wachovia is committed to building its office tower as well as a 2500 space parking garage underground that would have dedicated spaces for the cultural facilities. There is a gap in the financing for the cultural facilities portion of the project.

Funding Summary (Debt Capacity):	
Car rental tax (local allocation)	$69.7M
Wachovia tax base pledge ($400M AV)	$60.0M
Operating converted to capital	$18.8M
BofA purchase of Craft & Design facility	$10.0M
Total	**$158.5M**

Project Budgets	
Afro-American Cultural Center	$18.7M
Bechtler Art Museum	$17.6M
Discovery Place	$31.6M
Mint Museum	$56.4M
Performing Arts Theater	$34.2M
Total	**$158.5M**

We Need Your Help

We need your support of the project to show Wachovia we appreciate their continued commitment to North Carolina.

We need authorization to allow Mecklenburg County to levy up to a 5% car rental tax dedicated to transit.

The City can then allocate local dollars to the capital costs of the cultural facilities.

That dedicated funding source will allow for a private endowment campaign which will raise $75M plus for the operating support of the cultural facilities.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☒ Senate Committee Substitute for

HB 1963 A BILL TO BE ENTITLED AN ACT TO MAKE TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES TO THE REVENUE LAWS AND RELATED STATUTES, TO IMPROVE THE COLLECTION AND ADMINISTRATION OF THE MOTOR FUEL TAX, AND TO AUTHORIZE A COUNTY THAT IMPOSES A SALES TAX FOR PUBLIC TRANSPORTATION TO LEVY A VEHICLE RENTAL TAX.

☒ With recommendation that the House concur.

(FOR JOURNAL USE ONLY)

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1431
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1431-CSSVx-99 [v.2]

7/10/2006 6:49:38 PM

Short Title: Burgaw/New Hanover/Wilmington Occupancy Tax. (Local)

Sponsors:

Referred to:

May 17, 2006

A BILL TO BE ENTITLED

AN ACT (1) TO AUTHORIZE THE TOWN OF BURGAW TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX; AND (2) TO CREATE THE WILMINGTON CONVENTION CENTER DISTRICT; TO MODIFY THE DISTRIBUTION OF COUNTY AND CITY OCCUPANCY TAX PROCEEDS DERIVED FROM ACCOMMODATIONS LOCATED IN THE DISTRICT; TO CREATE THE NEW HANOVER COUNTY DISTRICT U; TO AUTHORIZE THE NEW HANOVER COUNTY DISTRICT U TO LEVY A THREE PERCENT OCCUPANCY TAX; AND TO MAKE ADMINISTRATIVE CHANGES TO THE WILMINGTON OCCUPANCY TAX.

The General Assembly of North Carolina enacts:

BURGAW OCCUPANCY TAX

SECTION 1. Occupancy tax. – (a) Authorization and Scope. – The Board of Commissioners of the Town of Burgaw may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 1.(c) Distribution and Use of Tax Revenue. – The Town of Burgaw shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Burgaw Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Burgaw and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

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

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

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

SECTION 2. Tourism Development Authority. – (a) Appointment and Membership. – When the Board of Commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating the Burgaw Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members shall be individuals who are affiliated with businesses that collect the tax in the town and at least three-fourths of the members shall be individuals who are currently active in the promotion of travel and tourism in the town. The Board of Commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

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

SECTION 2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

SECTION 2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Board of Commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the Board of Commissioners may require.

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

"(g) This section applies only to Beech Mountain District W, to the Cities of Belmont, Elizabeth City, Eden, Gastonia, Goldsboro, Greensboro, High Point, Kings Mountain, Lexington, Lincolnton, Lumberton, Monroe, Mount Airy, Reidsville,

Roanoke Rapids, Shelby, Statesville, Washington, and Wilmington, to the Towns of Beech Mountain, Blowing Rock, Burgaw, Carolina Beach, Carrboro, Franklin, Kure Beach, Jonesville, Mooresville, North Topsail Beach, Selma, Smithfield, St. Pauls, Troutman, West Jefferson, Wilkesboro, and Wrightsville Beach, and to the municipalities in Avery and Brunswick Counties."

NEW HANOVER OCCUPANCY TAX CHANGES

SECTION 4. Section 3 of S.L. 2002-138 reads as rewritten:

"SECTION 3. Section 36.1 of Chapter 908 of the 1983 Session Laws is recodified as Section ~~32(b)~~31(b) of Chapter 908 of the 1983 Session Laws."

SECTION 5. Part VIII of Chapter 908 of the 1983 Session Laws, as amended by Chapter 987 of the 1983 Session Laws, Chapters 726 and 971 of the 1985 Session Laws, Chapter 540 of the 1995 Session Laws, S.L. 2002-138, and S.L. 2003-166, reads as rewritten:

"Part VIII. New Hanover Occupancy Tax.

"Sec. 31. Levy of Tax. – (a) Two-Percent Tax. – The New Hanover County Board of Commissioners may levy a room occupancy and tourism development tax of two percent (2%) of the gross receipts derived from the rental of any ~~accommodations~~ room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that ~~are~~ is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, benevolent, or religious ~~organizations.~~organizations when furnished in furtherance of their nonprofit purpose.

(b) Additional One-Percent Tax. – In addition to the tax authorized by subsection (a) of this section, the New Hanover County Board of Commissioners may levy a room occupancy and tourism development tax of one percent (1%) of the gross receipts derived from the rental of accommodations taxable under that subsection. The levy, collection, administration, and repeal of the tax authorized by this subsection, and the use of tax revenue from a tax levied under this subsection, shall be in accordance with Sections 31 through 35 of this ~~Part.~~ part. New Hanover County may not levy a tax under this subsection unless it also levies a tax under subsection (a) of this section.

"Sec. 32. Definitions. – The following definitions apply in this ~~Part:~~part:

(1) Beach nourishment. – The placement of sand, from other sand sources, on a beach or dune by mechanical means and other associated activities that are in conformity with the North Carolina Coastal Management Program along the shorelines of the Atlantic Ocean of North Carolina and connecting inlets for the purpose of widening the beach to benefit public recreational use and mitigating damage and erosion from storms to inland property. The term includes expenditures for any of the following:

a. Costs directly associated with qualifying for projects either contracted through the U.S. Army Corps of Engineers or otherwise permitted by all appropriate federal and State agencies.

b. The nonfederal share of the cost required to construct these projects.
c. The costs associated with providing enhanced public beach access.
d. The costs of associated nonhardening activities such as the planting of vegetation, the building of dunes, and the placement of sand fences.

(2) Beach towns. – Carolina Beach, Kure Beach, and Wrightsville Beach.

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

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

(5) Tourism-related expenditures. – Expenditures that, in the judgment of the Authority, are designed to increase the use of lodging facilities, meeting facilities, and convention facilities in an area by attracting tourists or business travelers to the area. The term includes tourism-related capital expenditures and beach nourishment.

"Sec. 33. Administration of Tax. – A tax levied under this ~~act~~ part shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this ~~act.~~ part.

"Sec. 34. Establishment of the Cape Fear Coast Convention and Visitors Bureau as a Tourism Development Authority. – (a) Creation. – As soon as practicable before February 1, 2003, the board of commissioners shall adopt a resolution creating the Cape Fear Coast Convention and Visitors Bureau, a tourism development authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The county shall transfer to the Authority upon its creation all the assets of the county's convention and visitors bureau.

(b) Membership. – The Authority shall be composed of the following 15 voting members: five ex officio members or their designees and 10 additional members appointed by the board of commissioners.

(1) The ex officio members are listed below. Each ex officio member may designate to serve in the member's place an individual who serves on the governing body of the county or municipality that the member represents.
a. The chair of the board of county commissioners.
b. The mayor of the City of Wilmington.
c. The mayors of the beach towns.

(2) The board of county commissioners shall appoint the members listed below. The resolution creating the Authority must provide for staggered terms for the appointed members.

a. The owner or manager of a hotel of 150 rooms or more in the town of Wrightsville Beach. This individual must have experience in promoting travel and tourism.

b. The owner or manager of a hotel in the town of Carolina Beach and the owner or manager of a hotel in the town of Kure Beach. These individuals must have experience in promoting travel and tourism.

c. The owner or manager of a hotel of 150 rooms or more in the City of Wilmington. This individual must have experience in promoting travel and tourism.

d. The owner or manager of a hotel of fewer than 150 rooms in the City of Wilmington. This individual must have experience in promoting travel and tourism.

e. The owner or manager of a bed and breakfast facility. This individual must have experience in promoting travel and tourism.

f. The owner or manager of a company that manages and rents more than 100 vacation rental properties. This individual must have experience in promoting travel and tourism.

g. A representative of a tourism attraction in the county who is actively involved in the promotion of travel and tourism in the county.

h. A representative of the Wilmington Chamber of Commerce who is actively involved in promoting travel and tourism in the county.

i. The owner or manager of a restaurant business in the county.

(c) Administration. – The board of commissioners shall determine the compensation, if any, to be paid to members of the Authority. The resolution creating the Authority must designate one member of the Authority to serve as the initial chair. The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. During the first quarter of each calendar year beginning in 2004, the Authority must meet to elect a chair from among its members. The Finance Officer for New Hanover County shall be the ex officio finance officer of the Authority.

(d) Duties. – The Authority shall expend the net proceeds of the taxes distributed to it for the purposes provided by law. The Authority shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

(e) Reports. – The Authority shall report quarterly and at the close of the fiscal year on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require. It shall file these reports with the board of commissioners and with the governing body of each municipality in the county.

"Sec. 34.1. Establishment of the Wilmington Convention Center District. – The area in Wilmington, North Carolina extending from the Isabel S. Holmes Bridge to the Cape Fear Memorial Bridge with Fourth Street on one side and the Cape Fear River on the other side shall be known as the Wilmington Convention Center District.

"Sec. 35. Disposition of Taxes Collected. –

(a) Except as otherwise provided in subsection (b) of this section, New Hanover County shall distribute the net proceeds of the occupancy taxes levied under Section 31 of this ~~Part~~ part as provided in this ~~section:~~subsection:

(1) Proceeds Derived from Accommodations in the Convention Center District. – The net proceeds derived from accommodations located in the Wilmington Convention Center District shall be distributed as follows:

a. Forty percent (40%) shall be remitted quarterly to the convention center account, established in accordance with S.L. 2002-139, as amended by this act. The proceeds in the account shall be remitted quarterly to and used by the City of Wilmington only in accordance with Section 1(d) of S.L. 2002-139, as amended by this act.

b. Thirty percent (30%) shall be deposited in a special fund, the cash balance of which shall be deposited at interest or invested in accordance with G.S. 159-30. These funds shall be used only for beach nourishment.

c. Thirty percent (30%) shall be distributed on a quarterly basis to the Tourism Development Authority. These funds shall be used only to promote travel and tourism throughout New Hanover County. These funds shall not be used to plan, construct, operate, or maintain a civic center, convention center, public auditorium, or like facility.

(2) Proceeds Derived from Accommodations Outside the Convention Center District. – The net proceeds derived from accommodations located outside the Wilmington Convention Center District shall be distributed as follows:

a. Sixty percent (60%) of the net proceeds shall be deposited in a special fund, the cash balance of which shall be deposited at interest or invested in accordance with G.S. 159-30. These funds shall be used only for beach nourishment.

b. Forty percent (40%) of the net proceeds shall be distributed on a quarterly basis to the Tourism Development Authority. These funds shall be used only to promote travel and tourism throughout New Hanover County. These funds shall not be used to plan, construct, operate, or maintain a civic center, convention center, public auditorium, or like facility."

(b) If construction has not begun on a public convention center in the Wilmington Convention Center District by July 1, 2008, then the Wilmington

Convention Center District is dissolved, and the City of Wilmington must return to the county any funds it received under this section that have not been spent or committed. The county shall use these returned funds and all future tax proceeds derived from occupancy taxes levied under Section 31 of this part as follows:

(1) Sixty percent (60%) of the net proceeds shall be deposited in a special fund, the cash balance of which shall be deposited at interest or invested in accordance with G.S. 159-30. These funds shall be used only for beach nourishment.

(2) Forty percent (40%) of the net proceeds shall be distributed on a quarterly basis to the Tourism Development Authority. These funds shall be used only to promote travel and tourism throughout New Hanover County. These funds shall not be used to plan, construct, operate, ~~maintain, or in any way promote~~ or maintain a civic center, convention center, public auditorium, or like facility."

SECTION 6.(a) Section 35 of Part VIII of Chapter 908 of the 1983 Session Laws, as amended by Chapter 987 of the 1983 Session Laws, Chapter 971 of the 1985 Session Laws, Chapter 540 of the 1995 Session Laws, S.L. 2002-138, and Section 5 of this act, reads as rewritten:

"Sec. 35. Disposition of Taxes Collected. –

(a) Except as otherwise provided in subsection (b) of this section, New Hanover County shall distribute the net proceeds of the occupancy taxes levied under Section 31 of this part as provided in this subsection:

(1) Proceeds Derived from Accommodations in the Convention Center District. – One hundred percent (100%) of the~~The~~ net proceeds derived from accommodations located in the Wilmington Convention Center District shall be ~~distributed as follows:~~

~~a.~~ ~~Forty percent (40%) shall be~~ remitted quarterly to the convention center account, established in accordance with S.L. 2002-139, as amended by this act. The proceeds in the account shall be remitted quarterly to and used by the City of Wilmington only in accordance with Section 1(d) of S.L. 2002-139, as amended by this act.

~~b.~~ ~~Thirty percent (30%) shall be deposited in a special fund, the cash balance of which shall be deposited at interest or invested in accordance with G.S. 159-30. These funds shall be used only for beach nourishment.~~

~~c.~~ ~~Thirty percent (30%) shall be distributed on a quarterly basis to the Tourism Development Authority. These funds shall be used only to promote travel and tourism throughout New Hanover County. These funds shall not be used to plan, construct, operate, or maintain a civic center, convention center, public auditorium, or like facility.~~

(2) Proceeds Derived from Accommodations Outside the Convention Center District. – The net proceeds derived from accommodations

located outside the Wilmington Convention Center District shall be distributed as follows:

a. Sixty percent (60%) of the net proceeds shall be deposited in a special fund, the cash balance of which shall be deposited at interest or invested in accordance with G.S. 159-30. These funds shall be used only for beach nourishment.

b. Forty percent (40%) of the net proceeds shall be distributed on a quarterly basis to the Tourism Development Authority. These funds shall be used only to promote travel and tourism throughout New Hanover County. These funds shall not be used to plan, construct, operate, or maintain a civic center, convention center, public auditorium, or like facility."

(b) If construction has not begun on a public convention center in the Wilmington Convention Center District by July 1, 2008, then the Wilmington Convention Center District is dissolved, and the City of Wilmington must return to the county any funds it received under this section that have not been spent or committed. The county shall use these returned funds and all future tax proceeds derived from occupancy taxes levied under Section 31 of this part as follows:

(1) Sixty percent (60%) of the net proceeds shall be deposited in a special fund, the cash balance of which shall be deposited at interest or invested in accordance with G.S. 159-30. These funds shall be used only for beach nourishment.

(2) Forty percent (40%) of the net proceeds shall be distributed on a quarterly basis to the Tourism Development Authority. These funds shall be used only to promote travel and tourism throughout New Hanover County. These funds shall not be used to plan, construct, operate, or maintain a civic center, convention center, public auditorium, or like facility."

SECTION 6.(b) This section becomes effective July 1, 2008, and applies to room occupancy and tourism development taxes levied on and after that date.

NEW HANOVER COUNTY DISTRICT U

SECTION 7.(a) New Hanover County District U Created. – New Hanover County District U is created as a taxing district. Its jurisdiction consists of that part of New Hanover County that is located outside of incorporated areas within the county. New Hanover County District U is a body politic and corporate and has the power to carry out the provisions of this section. The New Hanover County Board of Commissioners shall serve ex officio as the governing body of the district, and the officers of the county shall serve as the officers of the governing body of the district. A simple majority of the governing body constitutes a quorum, and approval by a majority of those present is sufficient to determine any matter before the governing body, if a quorum is present.

SECTION 7.(b) Authorization and Scope. – The governing body of New Hanover County District U may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation

furnished by a hotel, motel, inn, tourist camp, or similar place within the district that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales or room occupancy tax. This tax does not apply to accommodations furnished by charitable, educational, or religious institutions or nonprofit organizations when furnished in furtherance of their nonprofit purpose.

SECTION 7.(c) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155 as if New Hanover County District U were a county. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

SECTION 7.(d) Distribution and Use of Tax Revenue. – New Hanover County District U shall deposit one hundred percent (100%) of the net proceeds of the room occupancy and tourism development tax levied under this section into a special fund, the cash balance of which shall be deposited at interest or invested in accordance with G.S. 159-30. These funds shall be used only for beach nourishment. In accordance with the North Carolina Constitution and the United States Constitution, the tax proceeds may be used only for the direct benefit of the jurisdiction of New Hanover District U. None of the proceeds may be used for beach nourishment in areas within New Hanover County that are outside of the district.

SECTION 7.(e) G.S. 153A-155(g) reads as rewritten:

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

WILMINGTON OCCUPANCY TAX CHANGES

SECTION 8. Section 1 of S.L. 2002-139 reads as rewritten:

"SECTION 1. Occupancy tax. – (a) Authorization and Scope. – If New Hanover County has created a Tourism Development Authority pursuant to Part VIII of Chapter 908 of the 1983 Session Laws, as amended, the Wilmington City Council may, by resolution, levy a ~~local~~ room occupancy and tourism development tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the city that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

Before adopting a resolution levying a tax under this section, the Wilmington City Council must hold a public hearing on the question. The City Council must give at least 15 days' public notice of the hearing, including details on the proposed uses of the tax proceeds. After adopting the resolution, the City Council must immediately forward a copy of the resolution to the New Hanover County Board of Commissioners and the

county manager. A tax levied under this subsection shall become effective no earlier than February 1, 2003.

"SECTION 1.(b) Administration. – New Hanover County shall collect and administer a tax levied under this section. Except as otherwise provided in this section, a tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

"SECTION 1.(c) Definitions. – The following definitions apply in this section:

(1) ~~Downtown Wilmington. – The area consisting of the Central Business District, the National Register Historic District, and the area extending to the Holmes Bridge and the Cape Fear River in the city of Wilmington, North Carolina.~~

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

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

(4) Tourism Development Authority or Authority. – The Authority created by New Hanover County pursuant to Part VIII of Chapter 908 of the 1983 Session Laws, as amended.

(5) Wilmington Convention Center District. – The district established pursuant to Section 34.1 of Part VIII of Chapter 908 of the 1983 Session Laws, as amended, and consisting of the area in Wilmington, North Carolina extending from the Isabel S. Holmes Bridge to the Cape Fear Memorial Bridge with Fourth Street on one side and the Cape Fear River on the other side.

"SECTION 1.(c1) Use of Tax Revenue. – If a tax is levied under this section, New Hanover County shall create a convention center account. The county shall remit, quarterly, the net proceeds of a room occupancy and tourism development tax levied under this section as follows:

(1) Proceeds Derived from Accommodations in the Convention Center District. – The net proceeds derived from accommodations located in the Wilmington Convention Center District shall be distributed as follows:

a. Forty percent (40%) shall be remitted quarterly to the convention center account, established in accordance with this subsection. The proceeds in the account shall be remitted quarterly to and used by the City of Wilmington only in accordance with subsection (d) of this section.

b. Thirty percent (30%) shall be deposited in a special fund, the cash balance of which shall be deposited at interest or invested in accordance with G.S. 159-30. These funds shall be used only for beach nourishment.

c. Thirty percent (30%) shall be distributed on a quarterly basis to the Tourism Development Authority. These funds shall be used only to promote travel and tourism throughout New Hanover County. These funds shall not be used to plan, construct, operate, maintain, or in any way promote a civic center, convention center, public auditorium, or like facility.

(2) Proceeds Derived from Accommodations Outside the Convention Center District. – One hundred percent (100%) of the net proceeds derived from accommodations located outside the Wilmington Convention Center District shall be distributed to the convention center account.

"SECTION 1.(d) Use of ~~Tax Revenue.~~ Funds in Convention Center Account. ~~If a tax is levied under this section, New Hanover County shall create a convention center account. The county shall remit the net proceeds of a tax levied under this section quarterly to the convention center account.~~ Funds in the convention center account, established under Section 1(c1) of this act, including interest or investment income on the account, may be used only as provided in this subsection:

(1) The county shall hold the funds in the convention center account, including interest or investment income, until one or more of the conditions provided in this subsection have been met. When any of the conditions provided in subdivision (2), (3), or (4) of this subsection has been met, the proceeds shall be used as provided in that subdivision.

(2) ~~If, at the end of three years after the first levy of a tax under this section,~~ If the City of Wilmington has not demonstrated to the satisfaction of a Tourism Development Authority created by the county pursuant to a local act of the General Assembly by December 31, 2007 that all financing and development arrangements for a convention center have been completed, the county shall remit all funds in the convention center account to the Tourism Development Authority. Thereafter, all tax proceeds remitted to the convention center account shall be remitted quarterly to the Tourism Development Authority. The Authority shall use these funds only to promote travel and tourism. For the purpose of this subdivision, completion of financing and development arrangements includes, at a minimum, obtaining financing commitments for construction, entering into contracts for construction and management, and securing the necessary land for the project.

(3) ~~If, within three years after the first levy of a tax under this section,~~ If the City of Wilmington demonstrates to the satisfaction of a Tourism

Development Authority created by the county pursuant to a local act of the General Assembly by December 31, 2007 that all financing and development arrangements for a convention center have been completed, the county shall remit all funds in the convention center account to the City of Wilmington. Thereafter, except as provided in subdivision (4) of this subsection, all tax proceeds remitted to the convention center account shall be remitted quarterly to the City of Wilmington. The City of Wilmington may use the funds only for construction, financing, operation, promotion, and maintenance of the convention center. For the purpose of this subdivision, completion of financing and development arrangements includes, at a minimum, obtaining financing commitments for construction, entering into contracts for construction and management, and securing the necessary land for the project.

(4) If the condition set out in subdivision (3) of this subsection has been ~~met~~ met, but ~~within four years after the first levy of a tax under this section,~~ the City of Wilmington fails to demonstrate by July 1, 2008 to the satisfaction of the Tourism Development Authority that construction has begun on a convention center in Downtown Wilmington, then the city must return to the county any funds it received under this subsection that have not been spent or committed. The county shall use these funds and any tax proceeds remitted thereafter to the convention center account only to promote travel and tourism in the city. If the county has created a Tourism Development Authority pursuant to a local act of the General Assembly, the county must remit the funds and future tax proceeds to the Tourism Development Authority. The Authority shall use these funds only to promote travel and tourism in the city.

"SECTION 1.**(e)** Reports. – Each entity responsible for administering and spending the proceeds of a tax levied under this section must each annually publish a detailed, audited report on its receipts and expenditures of the occupancy tax proceeds during the preceding year. The text of the report must be included in the minutes of the entity's governing body and placed on a public web site, and must be made available in hard copy upon request."

SECTION 9.(a) Section 1(c1) of S.L. 2002-139, as amended by Section 8 of this act, reads as rewritten:

"SECTION 1.(c1) Use of Tax Revenue. – If a tax is levied under this section, New Hanover County shall create a convention center account. The county shall remit, quarterly, one hundred percent (100%) of the net proceeds of a tax levied under this section ~~as follows:~~

~~(1) Proceeds Derived from Accommodations in the Convention Center District. The net proceeds derived from accommodations located in the Wilmington Convention Center District, established in Section 34.1 of this part, shall be distributed as follows:~~

~~a. Forty percent (40%) shall be remitted quarterly~~ to the convention center account, established in accordance with this subsection. The proceeds in the account shall be remitted quarterly to and used by the City of Wilmington only in accordance with subsection (d) of this section.

~~b. Thirty percent (30%) shall be deposited in a special fund, the cash balance of which shall be deposited at interest or invested in accordance with G.S. 159-30. These funds shall be used only for beach nourishment.~~

~~c. Thirty percent (30%) shall be distributed on a quarterly basis to the Tourism Development Authority. These funds shall be used only to promote travel and tourism throughout New Hanover County. These funds shall not be used to plan, construct, operate, maintain, or in any way promote a civic center, convention center, public auditorium, or like facility.~~

~~(2) Proceeds Derived from Accommodations Outside the Convention Center District. One hundred percent (100%) of the net proceeds derived from accommodations located outside the Wilmington Convention Center District shall be distributed to the convention center account."~~

SECTION 9.(b) This section becomes effective July 1, 2008, and applies to room occupancy and tourism development taxes levied on and after that date.

REPORTING REQUIREMENT

SECTION 10. Reporting Requirement. – The New Hanover Tourism Development Authority and the City of Wilmington shall report to the General Assembly by July 1, 2008, and annually thereafter, on the collection and distribution of occupancy tax proceeds, including how the amended distribution formula authorized by this act is working, on the progress of the construction of the convention center, and on any other issues related to the use of occupancy tax proceeds in New Hanover County and the City of Wilmington as the General Assembly deems appropriate.

EFFECTIVE DATE

SECTION 11. Sections 1 through 3 of this act are effective when they become law. Except as otherwise provided, the remainder of this act becomes effective September 1, 2006, and applies to room occupancy and tourism development taxes levied on and after that date.

.

SENATE BILL 1431:
Burgaw Occupancy Tax

BILL ANALYSIS

Committee:	House Finance	**Date:**	July 11, 2006
Introduced by:	Sen. Soles	**Summary by:**	Trina Griffin Committee Counsel
Version:	PCS to First Edition S1431-CSSVx-99		

SUMMARY: ***Senate Bill 1431 authorizes the Town of Burgaw to levy a 3% room occupancy tax. Two-thirds of the proceeds would be used to promote travel and tourism and one-third would be used for tourism-related expenditures. This bill conforms to the guidelines supported by the North Carolina Travel and Tourism Coalition and adhered to by the House Finance Committee.***

The Proposed Committee Substitute adds provisions relating to the New Hanover County and City of Wilmington occupancy taxes.

CURRENT LAW: The Town of Burgaw currently has no authority to levy a room occupancy tax. It is located in Pender County, which is authorized to levy a 3% tax. Under this bill, the total rate of occupancy tax in the Town of Burgaw would be 6%.

BILL ANALYSIS: Senate Bill 1431 authorizes the Town of Burgaw to levy a room occupancy tax of up to 3%. The proceeds must be remitted to a town Tourism Development Authority (TDA), which must use at least two-thirds of the proceeds to promote travel and tourism and the remainder for tourism-related expenditures. These administrative and use provisions conform to the uniform guidelines referenced above and detailed in the chart below:

UNIFORM OCCUPANCY TAX PROVISIONS
Rate – The county tax rate cannot exceed 6% and the city tax rate, when combined with the county rate, cannot exceed 6%.
Use – Two-thirds of the proceeds must be used to promote travel and tourism and the remainder must be used for tourism related expenditures.
Definitions The term "net proceeds", "promote travel and tourism", and "tourism related expenditures" are defined terms.
Administration – The net revenues must be administered by a local tourism development authority that has the authority to determine how the tax proceeds will be used, is created by a local ordinance, and at least 1/2 of the members must be currently active in the promotion of travel and tourism in the county and 1/3 of the members must be affiliated with organizations that collect the tax.
Costs of Collection – The taxing authority may retain from the revenues its actual costs of collection, not to exceed 3% of the first $500,000 collected each year plus 1% of the remainder collected each year.

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

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

PROPOSED COMMITTEE SUBSTITUTE: The Proposed Committee Substitute adds provisions relating to the New Hanover and Wilmington occupancy tax provisions as follows:

- Modifies the distribution of the New Hanover County and City of Wilmington occupancy tax proceeds, effective September 1, 2006.
- Creates a new taxing district consisting of the unincorporated areas of New Hanover County for the purpose of levying a 3% room occupancy and tourism development tax to be used for beach nourishment.
- Changes the dates by which Wilmington must demonstrate to the TDA that it has completed development and financing arrangements and that construction has begun on a convention center in order to retain occupancy tax proceeds remitted to it for that purpose.
- Adds an annual reporting requirement requiring that the New Hanover TDA and the City of Wilmington report to the General Assembly on the collection and distribution of occupancy tax proceeds and the progress of the convention center.

CURRENT LAW: New Hanover County is authorized to levy a 3% room occupancy and tourism development tax. Sixty percent (60%) of the net proceeds are deposited into a special fund to be used only for beach nourishment. Forty percent (40%) of the net proceeds are remitted to the Tourism Development Authority and used to promote travel and tourism.

The City of Wilmington is authorized to levy a 3% room occupancy and tourism development tax, which is collected by the county. One hundred percent (100%) of the net proceeds are remitted to a convention center account. If, by the end of three years after the first levy of a room occupancy tax, the City of Wilmington has demonstrated to the TDA that all development and financing arrangements for a convention center have been completed, the county must remit the funds in the account to the City of Wilmington. The city may use the funds only for the construction, financing, operation, promotion, and maintenance of the convention center. Within four years after the first levy of the occupancy tax, the City of Wilmington must further demonstrate that construction has begun on the convention center. If either of these conditions is not met, the city is required to return to the TDA all funds remitted to it. The TDA must use the funds to promote travel and tourism in the city. A room occupancy tax was first levied in the City of Wilmington in March of 2003.

BILL ANALYSIS: The Proposed Committee Substitute for Senate Bill 1431 adds the following:

- Creates the "Wilmington Convention Center District" defined as the area in Wilmington, North Carolina extending from the Isabel S. Holmes Bridge to the Cape Fear Memorial Bridge with Fourth Street on one side and the Cape Fear River on the other side.
- Creates New Hanover County District U as a taxing district consisting of the unincorporated areas of the county for the purpose of levying a 3% room occupancy and tourism development tax.
- Changes from "three years from the date of the first levy of a tax" (March 2006) to "December 31, 2007" as the date by which the City of Wilmington must demonstrate to the county TDA that it has completed all development and financing arrangements for the construction of a convention center.

- Changes from "four years from the date of the first levy of a tax" (March 2007) to "July 1, 2008" as the date by which the City of Wilmington must demonstrate to the county TDA that it has begun construction of a convention center.
- Establishes a reporting requirement requiring that the New Hanover TDA and the City of Wilmington annually report to the General Assembly, beginning July 1, 2008, on the collection and distribution of occupancy tax proceeds, including how the amended distribution formula is working and on the progress of the construction of the convention center.
- Modifies the distribution formula for **both** the New Hanover and the Wilmington occupancy tax as follows:

Origin of Tax	Sept. 1, 2006–June 30, 2008	July 1, 2008 Forward
Wilmington Convention Center District 3% county + 3% city = 6% tax	40% = Convention center account 30% = Beach nourishment 30% = TDA (for promotion)	100% = Convention center account 0% = Beach nourishment 0% = TDA (for promotion)
Outside Convention Center District (but within city limits) 3% county + 3% city = 6% tax	3% county tax = • 60% beach nourishment • 40% TDA (for promotion)	3% county tax = • 60% beach nourishment • 40% TDA (for promotion)
	3% city tax = • 100% convention center	3% city tax = 100% convention center
New Hanover County District U (unincorporated area of the county) 3% county + 3% district = 6% tax	3% county tax = • 60% beach nourishment • 40% TDA (for promotion)	3% county tax = • 60% beach nourishment • 40% TDA (for promotion)
	3% district tax = • 100% beach nourishment	3% district tax = 100% beach nourishment

EFFECTIVE DATE: Sections 1 through 3 of this act are effective when they become law. Except as otherwise provided, the remainder of this act becomes effective September 1, 2006, and applies to room occupancy and tourism development taxes levied on and after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

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

DATE: July 10, 2006

TO: House Finance Committee

FROM: Rodney Bizzell
Fiscal Research Division

RE: PCS S1431

FISCAL IMPACT

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

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES:					
Town of Burgaw	$6,570	$6,773	$6,929	$7,088	$7,251
New Hanover Dist. U	Approximately $110,000 annually. See assumptions and methodology.				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Town of Burgaw, New Hanover County, City of Wilmington

EFFECTIVE DATE: July 1, 2006

BILL SUMMARY:
Senate Bill 1431 authorizes the Town of Burgaw to levy a 3% room occupancy tax. Two-thirds of the proceeds would be used to promote travel and tourism and one-third would be used for tourism-related expenditures. This bill conforms to the guidelines supported by the North Carolina Travel and Tourism Coalition and adhered to by the House Finance Committee.

The Proposed Committee Substitute for House Bill 2684 does the following:

- Modifies the distribution of the New Hanover County and City of Wilmington occupancy tax proceeds, effective September 1, 2006.
- Creates a new taxing district consisting of the unincorporated areas of New Hanover County for the purpose of levying a 3% room occupancy and tourism development tax to be used for beach nourishment.
- Changes the dates by which Wilmington must demonstrate to the TDA that it has completed development and financing arrangements and that construction has begun on a convention center in order to retain occupancy tax proceeds remitted to it for that purpose.
- Adds an annual reporting requirement requiring that the New Hanover TDA and the City of Wilmington report to the General Assembly on the collection and distribution of occupancy tax proceeds and the progress of the convention center.

ASSUMPTIONS AND METHODOLOGY:

Town of Burgaw
Based on information from Pender County, there is one motel in the Town of Burgaw. Assuming 25 rooms, an average rate of $40 per night and a 60% occupancy rate, the 3% occupancy tax would generate approximately $6,570 annually. The general rate for the Consumer Price Index is used to determine the rate of growth in the tax collections for future years.

New Hanover County
The proposed District U revenues are calculated by subtracting occupancy tax revenues from the New Hanover County municipalities from the current 3% New Hanover County tax. The result is the revenue that would be generated from the proposed 3% tax in the unincorporated areas of the county.

The bill also changes the distributions for the city and county occupancy taxes as described in the table below:

Origin of Tax	Sept. 1, 2006–June 30, 2008	July 1, 2008 Forward
Wilmington Convention Center District 3% county + 3% city = 6% tax	40% = Convention center account 30% = Beach nourishment 30% = TDA (for promotion)	100% = Convention center account 0% = Beach nourishment 0% = TDA (for promotion)
Outside Convention Center District (but within city limits) 3% county + 3% city = 6% tax	3% county tax = • 60% beach nourishment • 40% TDA (for	3% county tax = • 60% beach nourishment • 40% TDA (for promotion)

	promotion)	
	3% city tax = • 100% convention center	3% city tax = 100% convention center
New Hanover County District U (unincorporated area of the county) 3% county + 3% district = 6% tax	3% county tax = • 60% beach nourishment • 40% TDA (for promotion)	3% county tax = • 60% beach nourishment • 40% TDA (for promotion)
	3% district tax = • 100% beach nourishment	3% district tax = 100% beach nourishment

The revenue from the New Hanover County occupancy tax generated from within the proposed convention center district would be directed to the convention center account beginning July 1, 2008. The amount of revenue that would be re-directed is approximately $250,000 annually based on projected revenues from the proposed convention center hotel.

SOURCES OF DATA:
Pender County, City of Wilmington, NC Department of Revenue.

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S D

SENATE BILL 2011
PROPOSED HOUSE COMMITTEE SUBSTITUTE S2011-PCS75559-RBf-78

Short Title: Winemaking on Premises Permit. (Public)

Sponsors:

Referred to:

May 26, 2006

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE ALCOHOLIC BEVERAGE CONTROL COMMISSION TO ISSUE PERMITS FOR 'WINEMAKING ON PREMISES' BUSINESSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-1001 is amended by adding a new subdivision to read:

"(17) Winemaking on Premises Permit. – A permit may be issued to a business, located in a jurisdiction where the sale of unfortified wine is allowed, where individual customers who are 21 years old or older may purchase ingredients and rent the equipment, time, and space to make unfortified wine for personal use in amounts set forth in 27 C.F.R. § 24.75. Except for wine produced for testing equipment or recipes and samples pursuant to this subdivision, the permit holder shall not engage in the actual production or manufacture of wine. Samples may be consumed on the premises only by a person who has a nonrefundable contract to ferment at the premises, and the samples may not exceed one ounce per sample. All wine produced at a winemaking on premises facility shall be removed from the premises by the customer, and may only be used for home consumption and the personal use of the customer."

SECTION 2. G.S. 18B-307 reads as rewritten:

"**§ 18B-307. Manufacturing offenses.**

(a) Offenses. – It shall be unlawful for any person, except as authorized by this Chapter, to:

(1) Sell or possess equipment or ingredients intended for use in the manufacture of any alcoholic beverage, except equipment and ingredients provided under a Brew on Premises permit or a Winemaking on Premises permit; or

(2) Knowingly allow real or personal property owned or possessed by him to be used by another person for the manufacture of any alcoholic beverage, except pursuant to a Brew on Premises permit or a Winemaking on Premises permit.

(b) Unlawful Manufacturing. – Except as provided in G.S. 18B-306, it shall be unlawful for any person to manufacture any alcoholic beverage, except at an establishment with a Brew on Premises permit or a Winemaking on Premises permit, without first obtaining the applicable ABC permit and revenue licenses.

(c) Second Offense of Manufacturing. – A second offense of unlawful manufacturing of alcoholic beverage shall be a Class I felony."

SECTION 3. G.S. 18B-902(d) is amended by adding a new subdivision to read:

"(38) Winemaking on premises permit. – $400.00."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 2011

Short Title:	Railroad Cars Sales Tax Changes.	(Public)
Sponsors:	Senator Hoyle.	
Referred to:	Finance.	

May 26, 2006

A BILL TO BE ENTITLED

AN ACT TO ALLOW UTILITIES THE SAME TREATMENT AS INTERSTATE CARRIERS WITH RESPECT TO THE SALES AND USE TAXES IMPOSED ON RAILWAY CARS.

The General Assembly of North Carolina enacts:

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

"(b) Periodic Rental Payments. – When a lease or rental agreement requires recurring periodic payments, the payments are sourced as follows:

(1) For leased or rented property, the first payment is sourced in accordance with the principles set out in subsection (a) of this section and each subsequent payment is sourced to the primary location of the leased or rented property for the period covered by the payment. This subdivision applies to all property except a motor vehicle, an aircraft, ~~and~~ transportation ~~equipment.~~equipment, and a utility company railway car.

(2) For leased or rented property that is a motor vehicle or an aircraft but is not transportation equipment, all payments are sourced to the primary location of the leased or rented property for the period covered by the payment.

(3) For leased or rented property that is transportation equipment, all payments are sourced in accordance with the principles set out in subsection (a) of this section.

(4) For a railway car that is leased or rented by a utility company and would be transportation equipment if it were used in interstate commerce, all payments are sourced in accordance with the principles set out in subsection (a) of this section."

SECTION 2. G.S. 105-164.14 is amended by adding a new subsection to read:

(a2) Utility Companies. – A utility company is allowed a refund, in accordance with this section, of part of the sales and use taxes paid by it on the purchase in this State of railway cars and locomotives and accessories for a railway car or locomotive the utility company operates. The Secretary shall prescribe the periods of time, whether monthly, quarterly, semiannually, or otherwise, with respect to which refunds may be claimed and shall prescribe the time within which, following these periods, an application for refund may be made.

An applicant for refund shall furnish the following information and any proof of the information required by the Secretary:

(1) A list identifying the railway cars, locomotives, and accessories purchased by the applicant inside or outside this State during the refund period.

(2) The purchase price of the items listed in subdivision (1) of this subsection.

(3) The sales and use taxes paid in this State on the listed items.

(4) The number of miles the applicant's railway cars and locomotives were operated both inside and outside this State during the refund period.

(5) Any other information required by the Secretary.

For each applicant, the Secretary shall compute the amount to be refunded as follows. First, the Secretary shall determine the ratio of the number of miles the applicant operated its railway cars and locomotives in this State during the refund period to the number of miles it operated them both inside and outside this State during the refund period. Second, the Secretary shall determine the applicant's proportional liability for the refund period by multiplying this mileage ratio by the purchase price of the items identified in subdivision (1) of this subsection and then multiplying the resulting product by the tax rate that would have applied to the items if they had all been purchased in this State. Third, the Secretary shall refund to each applicant the excess of the amount of sales and use taxes the applicant paid in this State during the refund period on these items over the applicant's proportional liability for the refund period."

SECTION 3. This act becomes effective July 1, 2006. Section 1 of this act applies to lease or rental payments made on or after that date. Section 2 of this act applies to purchases made on or after that date.

SENATE BILL 2011:
Winemaking on Premises Permit

BILL ANALYSIS

Committee:	House Finance	**Date:**	July 10, 2006
Introduced by:	Sen. Hoyle	**Summary by:**	Cindy Avrette
Version:	PCS to First Edition S2011-PCS75559-RBf-78		Committee Counsel

SUMMARY: ***The proposed House committee substitute for Senate Bill 2011 creates a new "Winemaking on Premises" permit to businesses where customers may purchase ingredients and rent the equipment, time, and space to make unfortified wine for personal use. There is a $400 application fee for the permit. The bill is effective when it becomes law.***

The House passed the substantially same bill last session: House Bill 1025. House Bill 1025 is currently in the Senate Finance Committee.

CURRENT LAW: Under G.S. 18B-307 it is generally unlawful for any person without the appropriate ABC permit to:

- Sell or possess equipment or ingredients intended for use in the manufacture of any alcoholic beverage
- Knowingly allow real or personal property owned or possessed by him to be used by another person for the manufacture of any alcoholic beverage.
- Manufacture any alcoholic beverage, without first obtaining the applicable ABC permit and revenue licenses.

There are two notable exceptions to the general prohibition against the unlicensed manufacture of alcoholic beverages. G.S. 18B-306 allows an individual to make, possess, and transport native wines and malt beverages for his own use and for the use of his family and guests; and G.S. 18B-1001(14) provides for the manufacture of malt beverages pursuant to a "Brew on Premises" permit. A brew on premises permit authorizes the holder to rent the equipment and space necessary to produce malt beverages only; it does not apply to the manufacture of wine.

A Brew on Premises permit may be issued to a business, located in a jurisdiction where the sale of malt beverages is allowed, where individual customers who are 21 years old or older may purchase ingredients and rent the equipment, time, and space to brew malt beverages for personal use in amounts set forth in federal law. The statute requires that the customer do all of the following:

a. Select a recipe and kettle.
b. Weigh out the proper ingredients and add them to the kettle.
c. Transfer the wort to the fermenter.
d. Add the yeast.
e. Place the ingredients in a fermentation room.
f. Filter, carbonate, and bottle the malt beverage.

BILL ANALYSIS: The proposed House committee substitute for Senate Bill 2011 would provide for the licensing of commercial establishments in which individuals could purchase ingredients and rent equipment, time, and space to make unfortified wine on the premises for their personal and family use, similar to the current brew on premises permit for making malt beverages. The permit holder will not

engage in the actual production of the wine, and all wine must be removed from the premises by the customer and used only for home consumption and the customer's personal use. The fee for the permit is $400. That is same amount as a 'Brew on Premises' permit.

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

Brenda Carter, counsel to the House Committee on Alcoholic Beverage Control, substantially contributed to this summary.

S2011e1-SMRB-CSRB-f-78

North Carolina General Assembly

House Committee on Finance

Minutes

~

July 13, 2006

The House Committee on Finance met on Thursday, July 13, 2006 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Alexander, Gibson, Howard, Luebke, McComas, and Wainwright; Vice-Chairs Daughtridge, Hill, Ross, Weiss, and Womble; and Representatives B. Allen, Blackwood, Bordsen, Carney, Dockham, Faison, Folwell, Glazier, Goforth, Hackney, Harrell, Holliman, Lewis, McGee, Rayfield, Underhill, Vinson, Walend, and Wiley. Ex-Officio member Representative Cunningham was present. Also present were Sergeant-at-Arms Nell Casper, Will Heath, Fred Hines, Marvin Lee, and Dusty Rhodes. Staff persons present included Cindy Avrette, Rodney Bizzell, Brenna Erford, Trina Griffin, Canaan Huie and Martha Walston. The Agenda and Visitor Registration Sheets are attached and incorporated into these minutes as **attachments 1 and 2.**

Chairman McComas called the meeting to order at 8:33 am and recognized the six (6) pages present: (1) Lesley Pearce of Person County, sponsored by Representative Wilkins; (2) Matt Gunnells of Wake County, sponsored by Speaker Black; (3) Seth Morris of Rowan County, sponsored by Representative Coates; (4) Erin Woodlief of Nash County, sponsored by Representative Fisher; (5) Sarah Flowers of Nash County, sponsored by Representative Fisher; and (6) Billy O'Donnell of Wake County, sponsored by Speaker Black.

The first bill under consideration by the Committee was **SB 1187 – TRYON PALACE FUND/INTEREST-BEARING** (see **attachment 3**). Chairman McComas first recognized Representative Hill who moved for the adoption of the proposed committee substitute for consideration by the Committee. The motion was adopted. Senator Bland was then recognized and explained that this bill makes the Tryon Palace Historic Sites and Gardens Fund interest-bearing. Following the explanation, Representative Blackwood moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. Seeing no further discussion, Chairman McComas called the motion to a vote and it carried by consent.

The next bill considered by the Committee was **HB 1820 – VARIOUS SATELLITE ANNEXATIONS** (see **attachment 4**). Chairman McComas first recognized Representative Gibson who explained that this bill removes the cap on satellite annexations for the Towns of Grimesland, Stem, and Stoval. Representative Glazier was then recognized following the explanation and moved that the Committee recommend that the House do concur in the Senate changes to House Bill 1820. As there was no further debate, Chairman McComas called the motion to a vote and it carried without objection.

Chairman McComas then recognized Representative Warren to explain **HB 350 – MARTIN COUNTY OCCUPANCY TAX CHANGES** (see **attachment 5**). Representative Warren explained that this bill was approved by the House and Senate and has returned back to the House for concurrence. She also stated that the bill would authorize Martin County to levy an additional 3% occupancy tax. Following the explanation, Representative Carney moved that the Committee recommend that the House do concur in the Senate changes to House Bill 350. Seeing no further discussion, Chairman McComas called the motion to a vote and it carried by consent.

The next bill considered by the Committee was **HB 1196 – REDUCE WHOLESALE DRUG DISTRIBUTOR LICENSE FEE** (see **attachment 6**). Chairman McComas first recognized Representative Holliman who moved for the adoption of the proposed committee substitute (PCS) for the Committee's consideration. The motion was adopted. Representative Hill was then recognized to explain the PCS. He stated that the PCS reduces the license fee for a wholesale distributor of prescription drugs from $500 for a manufacturer or $350 for any other applicant to $100 if the applicant's wholesale distribution facility does not exceed 800 square feet of floor space. Following the explanation, Representative Faison was recognized and moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. As there was no further debate, Chairman McComas called the motion to a vote and it carried without objection.

Chairman McComas then recognized Representative Spear to give an overview of **HB 1269 – CHOWAN OCCUPANCY TAX CHANGES** (see **attachment 7**). Representative Spear explained that this bill is back to the House for concurrence and it authorizes Chowan County to levy an additional 2% occupancy tax combined with the 3% already in statute. Representative Carney then moved for the Committee to recommend that the House do concur in the Senate changes to House bill 1269. Seeing no further discussion, Chairman McComas called the motion to a vote and it carried by consent.

The following bill considered by the Committee was **HB 882 – OCRACOKE TOWNSHIP OCCUPANCY TAX** (see **attachment 8**). Chairman McComas then again recognized Representative Spear to explain the bill. Representative Spear then stated that this bill would allow the Town of Ocracoke to levy a room occupancy tax of up to 2%. Following the explanation, Representative Daughtridge was recognized and asked if this is the only occupancy tax that has been authorized for a township. In response, Cindy Avrette of Research was recognized and stated that other occupancy taxes have been authorized previously for townships. Chairman McComas then recognized Representative Womble who moved for the Committee to recommend that the House do concur in the Senate changes to House Bill 882. As there was no further debate, Chairman McComas called the motion to a vote and it carried without objection.

The next bill under consideration by the Committee was **SB 1487 – DENTAL HYGIENE LAW CHANGES** (see **attachment 9**). Chairman McComas first recognized Representative Goodwin to explain the bill. She reported to the Committee that this bill authorizes the State Board of Dental Examiners to accept the results of Board-approved regional or national independent third party clinical examinations for applicants seeking a dental hygiene license. Also provided in the bill is an authorization allowing the Board to charge applicants the actual cost of the third-party testing service. She also told the Committee that this bill was a recommendation of the Joint Legislative Administrative Procedure Oversight Committee. Following the explanation, Representative Ross was recognized and moved that Senate Bill 1487 be given a favorable report. Seeing no further discussion, Chairman McComas called the motion to a vote and it carried by consent.

Chairman McComas then recognized Representative Lucy Allen to explain **HB 2445 – HALIFAX/AHOSKIE OCCUPANCY TAX** (see **attachment 10**). Representative Allen stated that the bill was before the Committee for concurrence and allows the Town of Ahoskie and the County of Halifax to levy an occupancy tax up to 3%. Following the explanation, Representative Bernard Allen was recognized and moved for the Committee to recommend that the House do concur in the Senate changes to House Bill 2445. As there was no further debate, Chairman McComas called the motion to a vote and it carried without objection.

The following bill considered by the Committee was **SB 1348 – DORTCHES/RUTHERFORD COUNTY CHANGES** (see **attachment 11**). Chairman McComas first recognized Representative Holliman who moved for the adoption of the proposed committee substitute (PCS) for the Committee's consideration. The motion carried. Representative Gibson was then recognized and explained that the PCS would repeal an exemption that kept certain divisions of land from being regulated by Rutherford County. Following the explanation, Representative Goforth moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. Seeing no further debate, Chairman McComas called the motion to a vote and it carried by consent.

The next bill under consideration by the Committee was **HB 2818 – SALES TAX ON OFF-ROAD VEHICLES** (see **attachment 12**). Chairman McComas then recognized Representative Hill who moved for the adoption of the proposed committee substitute (PCS). The motion carried. Representative West was then recognized and explained that this bill would exempt an individual with valid proof of out-of-state residence from sales tax on the purchase of off-road vehicles. He reported that the bill is a result of other states having similar sales tax exemptions for out-of-state residents, such as Tennessee. This has caused North Carolina residents in border counties to make off-road vehicle purchases in those border states. Representative West stated his hope that the bill would allow off-road vehicle dealers in North Carolina to attract out-of-state customers. Following the explanation, Representative Wainwright moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. Representative Luebke was then recognized and asked how the bill was eligible for consideration in the short session since it doesn't have a fiscal impact until July 2007. Chairman McComas then displaced House Bill 2818 as the bill's eligibility was in question.

Representative Alexander then assumed the position as Committee Chair as Representative McComas prepared to assist in presenting **SB 1431 – BURGAW OCCUPANCY TAX** (see **attachment 13**). Representative Hill was first recognized and moved for the adoption of the proposed committee substitute (PCS) for the Committee's consideration. The motion carried. Chairwoman Alexander then recognized Representative Wright to explain the bill. Represenrtative Wright stated that the new PCS, as compared with the PCS considered by the Committee on July 11, 2006, made no changes to the Burgaw occupancy tax piece but made a modification to the New Hanover and Wilmington sections of the bill. Trina Griffin of Research was then recognized and explained that the new PCS does not provide a time extension for Wilmington to meet certain contingencies in order to retain occupancy tax proceeds for the construction of a convention center. Representative Glazier was then recognized following the explanation and asked if the new proposed committee substitute met the occupancy tax guidelines established by the House Finance Subcommittee on Occupancy Tax. Trina Griffin responded saying that the guidelines regarding the occupancy tax distribution had not been met under the current PCS.

Chairwoman Alexander then recognized Representative Glazier again who asked for additional information on who was involved in the pending litigation. Tom Pollard, Attorney for the City of Wilmington, was recognized and stated that the plaintiff is a citizen of Wilmington as

well as three hotels in Wilmington and the defendant is the City of Wilmington and New Hanover County. Representative Lewis was then recognized and asked about how large the convention center taxing area was in Wilmington and if the hotels in the district were in support of the bill. Tom Pollard was again recognized and stated that the occupancy taxes in the downtown area would be redistributed and the actual tax rate would not be changed in that area. Representative Wainwright was then recognized and pointed out that the occupancy tax in Wilmington/New Hanover had never met the two-third / one-third distribution guideline abut rather had always had a 60/40 distribution. Chairwoman Alexander then recognized Representative Rayfield who asked Representative Womble why the Subcommittee on Occupancy tax let this bill out of the Subcommittee. In response, Representative Womble was recognized and stated that the Subcommittee gave the bill a report of no prejudice as a result of the tax not conforming to the guidelines. Representative Faison was then recognized and sent forth an amendment (see **attachment 14**) and moved for its adoption. He explained that the amendment added a provision allowing Caswell County and the Town of Yanceyville to levy an occupancy tax. This provision was originally a part of a previous omnibus occupancy tax bill passed by the House, but the Caswell County and Yanceyville provisions had been stripped out by the Senate. As there was no further debate, Chairwoman Alexander called the motion to a vote and the amendment was adopted.

Representative Lewis was then recognized and asked why the NC Travel and Tourism Coalition did not support the bill. Representative Wright then responded saying that they do not support the bill because a reduced amount of funding would be going toward tourism promotion. Chairwoman Alexander then recognized Representative Glazier who expressed his support for the PCS now that he had a better understanding of the surrounding issues. Dave Horne of Smith Anderson, representing the NC Travel and Tourism Coalition, was recognized and spoke in opposition to the bill because it does not follow the occupancy tax guidelines as established by the House Finance Subcommittee on Occupancy Tax. Representative Wright was then recognized and asked for staff to provide the Committee with examples of other local governments who are authorized to levy occupancy taxes that do not conform to the occupancy tax guidelines. Trina Griffin of Research was then recognized and gave examples of other occupancy taxes that do not follow the guidelines. She gave examples including the counties of Carteret, Durham, and Dare; and the cities of Charlotte and Gastonia. Chairwoman Alexander then recognized Representative Hill who moved for a favorable report to the proposed committee substitute, incorporating the Faison amendment, and an unfavorable report to the original bill. As there was no further debate, Chairwoman Alexander then called the motion to a vote and it carried by majority.

Representative McComas then reassumed his position as Chairman of the Committee. He then replaced **HB 2818 – SALES TAX ON OFF-ROAD VEHICLES** (see **attachment 12**) before the Committee for further debate. Representative Wainwright was then recognized and repeated his motion for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. Seeing no further discussion on the bill, Chairwoman Alexander called the motion to a vote and it carried by consent.

The following bill considered by the Committee was **HB 1839 – EXPAND HOMESTEAD EXEMPTION VIA TAX CREDIT** (see **attachment 15**). Representative Blackwood was first recognized and moved for the adoption of the proposed committee substitute for consideration by the Committee. The motion carried. Chairman McComas then recognized Representative Allred to explain the bill. Representative Allred reported to the Committee that the bill provides a refundable income tax credit equal to 50% of the property taxes paid on a primary residence by elderly or disabled persons whose taxable income is not more than $30,000 beginning for tax year 2007. Representative Hackney was then recognized and urged the Committee to use caution when considering this bill since it is a change in policy and requires the state to refund

property taxes to individuals. Representative Bordsen was then recognized and pointed out that this bill was not eligible for consideration this short session since it had no fiscal impact on the 2006 fiscal year. Representative Luebke then stated that besides the possible ineligibility of the bill, it is not responsible because it has an annual $29 million impact in fiscal years subsequent to 2006. As there was question on the eligibility of the bill, Chairman McComas then displaced the bill.

The final bill considered by the Committee was **SB 881 – LAPSE IN LIABILITY INSURANCE** (see **attachment 16**). Representative Alexander was recognized and explained that this bill makes several revisions to the penalties for individuals operating motor vehicles when their liability insurance policies have lapsed or the status has changed. Representative Wainwright was then recognized to send forth an amendment (see **attachment 17**) and move for its adoption. He explained that the amendment would reduce the fees stated in the bill and that all interested parties for the bill were in support of the amendment. Seeing no further discussion, Chairman McComas called the motion to a vote and the Wainwright amendment was adopted. Representative Alexander was then recognized and sent forth an amendment (see **attachment 18**). She explained that the amendment requires insurers to provide health care providers or health care facilities with payment or status of payment at least 45 days before seeking an overpayment recovery adjustment or offsetting future payments. Representative Holliman was then recognized and stated that Medicare and the State Health Plan have two years to recoup costs and why should private industries be allowed to have less time. Representative Hackney was recognized and questioned if the amendment was germane to the bill. Noting the concerns expressed, Representative Alexander was then recognized and withdrew her amendment. Chairman McComas then recognized Representative Holliman who moved that a proposed committee substitute for Senate Bill 881, incorporating the adopted Wainwright amendment, be given a favorable report and an unfavorable report as to the original bill. As there was no further debate, Chairman McComas called the motion to a vote and it carried without objection.

Having no further business before the Committee, Chairman McComas adjourned the Committee at 10:01 am.

Respectfully submitted,

Representative Danny McComas
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:

1. Agenda
2. Visitor Registration Sheets
3. Senate Bill 1187 (and related materials)
4. House Bill 1820 (and related materials)
5. House Bill 350 (and related materials)
6. House Bill 1196 (and related materials)
7. House Bill 1269 (and related materials)
8. House Bill 882 (and related materials)
9. Senate Bill 1487 (and related materials)
10. Senate Bill 1348 (and related materials)
11. House Bill 2818 (and related materials)
12. House Bill 2818 (and related materials)

13. Senate Bill 1431 (and related materials)
14. Faison Amendment on SB 1431 - **ADOPTED**
15. House Bill 1839 (and related materials)
16. Senate Bill 881 (and related materials)
17. Wainwright Amendment on SB 881 - **ADOPTED**
18. Alexander Amendment on SB 881 - **WITHDRAWN**

North Carolina General Assembly

House Committee on Finance

Minutes

~

July 13, 2006

The House Committee on Finance met on Thursday, July 13, 2006 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Alexander, Gibson, Howard, Luebke, McComas, and Wainwright; Vice-Chairs Daughtridge, Hill, Ross, Weiss, and Womble; and Representatives B. Allen, Blackwood, Bordsen, Carney, Dockham, Faison, Folwell, Glazier, Goforth, Hackney, Harrell, Holliman, Lewis, McGee, Rayfield, Underhill, Vinson, Walend, and Wiley. Ex-Officio member Representative Cunningham was present. Also present were Sergeant-at-Arms Nell Casper, Will Heath, Fred Hines, Marvin Lee, and Dusty Rhodes. Staff persons present included Cindy Avrette, Rodney Bizzell, Brenna Erford, Trina Griffin, Canaan Huie and Martha Walston. The Agenda and Visitor Registration Sheets are attached and incorporated into these minutes as **attachments 1 and 2**.

Chairman McComas called the meeting to order at 8:33 am and recognized the six (6) pages present: (1) Lesley Pearce of Person County, sponsored by Representative Wilkins; (2) Matt Gunnells of Wake County, sponsored by Speaker Black; (3) Seth Morris of Rowan County, sponsored by Representative Coates; (4) Erin Woodlief of Nash County, sponsored by Representative Fisher; (5) Sarah Flowers of Nash County, sponsored by Representative Fisher; and (6) Billy O'Donnell of Wake County, sponsored by Speaker Black.

The first bill under consideration by the Committee was **SB 1187 – TRYON PALACE FUND/INTEREST-BEARING** (see **attachment 3**). Chairman McComas first recognized Representative Hill who moved for the adoption of the proposed committee substitute for consideration by the Committee. The motion was adopted. Senator Bland was then recognized and explained that this bill makes the Tryon Palace Historic Sites and Gardens Fund interest-bearing. Following the explanation, Representative Blackwood moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. Seeing no further discussion, Chairman McComas called the motion to a vote and it carried by consent.

The next bill considered by the Committee was **HB 1820 – VARIOUS SATELLITE ANNEXATIONS** (see **attachment 4**). Chairman McComas first recognized Representative Gibson who explained that this bill removes the cap on satellite annexations for the Towns of Grimesland, Stem, and Stoval. Representative Glazier was then recognized following the explanation and moved that the Committee recommend that the House do concur in the Senate changes to House Bill 1820. As there was no further debate, Chairman McComas called the motion to a vote and it carried without objection.

Chairman McComas then recognized Representative Warren to explain **HB 350 – MARTIN COUNTY OCCUPANCY TAX CHANGES** (see **attachment 5**). Representative Warren explained that this bill was approved by the House and Senate and has returned back to the House for concurrence. She also stated that the bill would authorize Martin County to levy an additional 3% occupancy tax. Following the explanation, Representative Carney moved that the Committee recommend that the House do concur in the Senate changes to House Bill 350. Seeing no further discussion, Chairman McComas called the motion to a vote and it carried by consent.

The next bill considered by the Committee was **HB 1196 – REDUCE WHOLESALE DRUG DISTRIBUTOR LICENSE FEE** (see **attachment 6**). Chairman McComas first recognized Representative Holliman who moved for the adoption of the proposed committee substitute (PCS) for the Committee's consideration. The motion was adopted. Representative Hill was then recognized to explain the PCS. He stated that the PCS reduces the license fee for a wholesale distributor of prescription drugs from $500 for a manufacturer or $350 for any other applicant to $100 if the applicant's wholesale distribution facility does not exceed 800 square feet of floor space. Following the explanation, Representative Faison was recognized and moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. As there was no further debate, Chairman McComas called the motion to a vote and it carried without objection.

Chairman McComas then recognized Representative Spear to give an overview of **HB 1269 – CHOWAN OCCUPANCY TAX CHANGES** (see **attachment 7**). Representative Spear explained that this bill is back to the House for concurrence and it authorizes Chowan County to levy an additional 2% occupancy tax combined with the 3% already in statute. Representative Carney then moved for the Committee to recommend that the House do concur in the Senate changes to House bill 1269. Seeing no further discussion, Chairman McComas called the motion to a vote and it carried by consent.

The following bill considered by the Committee was **HB 882 – OCRACOKE TOWNSHIP OCCUPANCY TAX** (see **attachment 8**). Chairman McComas then again recognized Representative Spear to explain the bill. Representative Spear then stated that this bill would allow the Town of Ocracoke to levy a room occupancy tax of up to 2%. Following the explanation, Representative Daughtridge was recognized and asked if this is the only occupancy tax that has been authorized for a township. In response, Cindy Avrette of Research was recognized and stated that other occupancy taxes have been authorized previously for townships. Chairman McComas then recognized Representative Womble who moved for the Committee to recommend that the House do concur in the Senate changes to House Bill 882. As there was no further debate, Chairman McComas called the motion to a vote and it carried without objection.

The next bill under consideration by the Committee was **SB 1487 – DENTAL HYGIENE LAW CHANGES** (see **attachment 9**). Chairman McComas first recognized Representative Goodwin to explain the bill. She reported to the Committee that this bill authorizes the State Board of Dental Examiners to accept the results of Board-approved regional or national independent third party clinical examinations for applicants seeking a dental hygiene license. Also provided in the bill is an authorization allowing the Board to charge applicants the actual cost of the third-party testing service. She also told the Committee that this bill was a recommendation of the Joint Legislative Administrative Procedure Oversight Committee. Following the explanation, Representative Ross was recognized and moved that Senate Bill 1487 be given a favorable report. Seeing no further discussion, Chairman McComas called the motion to a vote and it carried by consent.

Chairman McComas then recognized Representative Lucy Allen to explain **HB 2445 – HALIFAX/AHOSKIE OCCUPANCY TAX** (see **attachment 10**). Representative Allen stated that the bill was before the Committee for concurrence and allows the Town of Ahoskie and the County of Halifax to levy an occupancy tax up to 3%. Following the explanation, Representative Bernard Allen was recognized and moved for the Committee to recommend that the House do concur in the Senate changes to House Bill 2445. As there was no further debate, Chairman McComas called the motion to a vote and it carried without objection.

The following bill considered by the Committee was **SB 1348 – DORTCHES/RUTHERFORD COUNTY CHANGES** (see **attachment 11**) Chairman McComas first recognized Representative Holliman who moved for the adoption of the proposed committee substitute (PCS) for the Committee's consideration. The motion carried. Representative Gibson was then recognized and explained that the PCS would repeal an exemption that kept certain divisions of land from being regulated by Rutherford County. Following the explanation, Representative Goforth moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. Seeing no further debate, Chairman McComas called the motion to a vote and it carried by consent.

The next bill under consideration by the Committee was **HB 2818 – SALES TAX ON OFF-ROAD VEHICLES** (see **attachment 12**). Chairman McComas then recognized Representative Hill who moved for the adoption of the proposed committee substitute (PCS). The motion carried. Representative West was then recognized and explained that this bill would exempt an individual with valid proof of out-of-state residence from sales tax on the purchase of off-road vehicles. He reported that the bill is a result of other states having similar sales tax exemptions for out-of-state residents, such as Tennessee. This has caused North Carolina residents in border counties to make off-road vehicle purchases in those border states. Representative West stated his hope that the bill would allow off-road vehicle dealers in North Carolina to attract out-of-state customers. Following the explanation, Representative Wainwright moved for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. Representative Luebke was then recognized and asked how the bill was eligible for consideration in the short session since it doesn't have a fiscal impact until July 2007. Chairman McComas then displaced House Bill 2818 as the bill's eligibility was in question.

Representative Alexander then assumed the position as Committee Chair as Representative McComas prepared to assist in presenting **SB 1431 – BURGAW OCCUPANCY TAX** (see **attachment 13**). Representative Hill was first recognized and moved for the adoption of the proposed committee substitute (PCS) for the Committee's consideration. The motion carried. Chairwoman Alexander then recognized Representative Wright to explain the bill. Represenrtative Wright stated that the new PCS, as compared with the PCS considered by the Committee on July 11, 2006, made no changes to the Burgaw occupancy tax piece but made a modification to the New Hanover and Wilmington sections of the bill. Trina Griffin of Research was then recognized and explained that the new PCS does not provide a time extension for Wilmington to meet certain contingencies in order to retain occupancy tax proceeds for the construction of a convention center. Representative Glazier was then recognized following the explanation and asked if the new proposed committee substitute met the occupancy tax guidelines established by the House Finance Subcommittee on Occupancy Tax. Trina Griffin responded saying that the guidelines regarding the occupancy tax distribution had not been met under the current PCS.

Chairwoman Alexander then recognized Representative Glazier again who asked for additional information on who was involved in the pending litigation. Tom Pollard, Attorney for the City of Wilmington, was recognized and stated that the plaintiff is a citizen of Wilmington as

well as three hotels in Wilmington and the defendant is the City of Wilmington and New Hanover County. Representative Lewis was then recognized and asked about how large the convention center taxing area was in Wilmington and if the hotels in the district were in support of the bill. Tom Pollard was again recognized and stated that the occupancy taxes in the downtown area would be redistributed and the actual tax rate would not be changed in that area. Representative Wainwright was then recognized and pointed out that the occupancy tax in Wilmington/New Hanover had never met the two-third / one-third distribution guideline abut rather had always had a 60/40 distribution. Chairwoman Alexander then recognized Representative Rayfield who asked Representative Womble why the Subcommittee on Occupancy tax let this bill out of the Subcommittee. In response, Representative Womble was recognized and stated that the Subcommittee gave the bill a report of no prejudice as a result of the tax not conforming to the guidelines. Representative Faison was then recognized and sent forth an amendment (see **attachment 14**) and moved for its adoption. He explained that the amendment added a provision allowing Caswell County and the Town of Yanceyville to levy an occupancy tax. This provision was originally a part of a previous omnibus occupancy tax bill passed by the House, but the Caswell County and Yanceyville provisions had been stripped out by the Senate. As there was no further debate, Chairwoman Alexander called the motion to a vote and the amendment was adopted.

Representative Lewis was then recognized and asked why the NC Travel and Tourism Coalition did not support the bill. Representative Wright then responded saying that they do not support the bill because a reduced amount of funding would be going toward tourism promotion. Chairwoman Alexander then recognized Representative Glazier who expressed his support for the PCS now that he had a better understanding of the surrounding issues. Dave Horne of Smith Anderson, representing the NC Travel and Tourism Coalition, was recognized and spoke in opposition to the bill because it does not follow the occupancy tax guidelines as established by the House Finance Subcommittee on Occupancy Tax. Representative Wright was then recognized and asked for staff to provide the Committee with examples of other local governments who are authorized to levy occupancy taxes that do not conform to the occupancy tax guidelines. Trina Griffin of Research was then recognized and gave examples of other occupancy taxes that do not follow the guidelines. She gave examples including the counties of Carteret, Durham, and Dare; and the cities of Charlotte and Gastonia. Chairwoman Alexander then recognized Representative Hill who moved for a favorable report to the proposed committee substitute, incorporating the Faison amendment, and an unfavorable report to the original bill. As there was no further debate, Chairwoman Alexander then called the motion to a vote and it carried by majority.

Representative McComas then reassumed his position as Chairman of the Committee. He then replaced **HB 2818 – SALES TAX ON OFF-ROAD VEHICLES** (see **attachment 12**) before the Committee for further debate. Representative Wainwright was then recognized and repeated his motion for a favorable report to the proposed committee substitute and an unfavorable report to the original bill. Seeing no further discussion on the bill, Chairwoman Alexander called the motion to a vote and it carried by consent.

The following bill considered by the Committee was **HB 1839 – EXPAND HOMESTEAD EXEMPTION VIA TAX CREDIT** (see **attachment 15**). Representative Blackwood was first recognized and moved for the adoption of the proposed committee substitute for consideration by the Committee. The motion carried. Chairman McComas then recognized Representative Allred to explain the bill. Representative Allred reported to the Committee that the bill provides a refundable income tax credit equal to 50% of the property taxes paid on a primary residence by elderly or disabled persons whose taxable income is not more than $30,000 beginning for tax year 2007. Representative Hackney was then recognized and urged the Committee to use caution when considering this bill since it is a change in policy and requires the state to refund

property taxes to individuals. Representative Bordsen was then recognized and pointed out that this bill was not eligible for consideration this short session since it had no fiscal impact on the 2006 fiscal year. Representative Luebke then stated that besides the possible ineligibility of the bill, it is not responsible because it has an annual $29 million impact in fiscal years subsequent to 2006. As there was question on the eligibility of the bill, Chairman McComas then displaced the bill.

The final bill considered by the Committee was **SB 881 – LAPSE IN LIABILITY INSURANCE** (see **attachment 16**). Representative Alexander was recognized and explained that this bill makes several revisions to the penalties for individuals operating motor vehicles when their liability insurance policies have lapsed or the status has changed. Representative Wainwright was then recognized to send forth an amendment (see **attachment 17**) and move for its adoption. He explained that the amendment would reduce the fees stated in the bill and that all interested parties for the bill were in support of the amendment. Seeing no further discussion, Chairman McComas called the motion to a vote and the Wainwright amendment was adopted. Representative Alexander was then recognized and sent forth an amendment (see **attachment 18**). She explained that the amendment requires insurers to provide health care providers or health care facilities with payment or status of payment at least 45 days before seeking an overpayment recovery adjustment or offsetting future payments. Representative Holliman was then recognized and stated that Medicare and the State Health Plan have two years to recoup costs and why should private industries be allowed to have less time. Representative Hackney was recognized and questioned if the amendment was germane to the bill. Noting the concerns expressed, Representative Alexander was then recognized and withdrew her amendment. Chairman McComas then recognized Representative Holliman who moved that a proposed committee substitute for Senate Bill 881, incorporating the adopted Wainwright amendment, be given a favorable report and an unfavorable report as to the original bill. As there was no further debate, Chairman McComas called the motion to a vote and it carried without objection.

Having no further business before the Committee, Chairman McComas adjourned the Committee at 10:01 am.

Respectfully submitted,

Representative Danny McComas
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:

1. Agenda
2. Visitor Registration Sheets
3. Senate Bill 1187 (and related materials)
4. House Bill 1820 (and related materials)
5. House Bill 350 (and related materials)
6. House Bill 1196 (and related materials)
7. House Bill 1269 (and related materials)
8. House Bill 882 (and related materials)
9. Senate Bill 1487 (and related materials)
10. Senate Bill 1348 (and related materials)
11. House Bill 2818 (and related materials)
12. House Bill 2818 (and related materials)

13. Senate Bill 1431 (and related materials)
14. Faison Amendment on SB 1431 - **ADOPTED**
15. House Bill 1839 (and related materials)
16. Senate Bill 881 (and related materials)
17. Wainwright Amendment on SB 881 - **ADOPTED**
18. Alexander Amendment on SB 881 - **WITHDRAWN**

AGENDA

ATTACHMENT 1

House Committee on Finance

Thursday, July 13, 2006
8:30 a.m.
Room 544 LOB
Chaired by: Rep. McComas

Co-Chairs:

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

Call to Order & Introduction of Pages

Bills:

HB 350	**MARTIN COUNTY OCCUPANCY TAX CHANGES (FOR CONCURRENCE)**	*Rep. Stiller*
HB 882	**OCRACOKE TOWNSHIP OCCUPANCY TAX (FOR CONCURRENCE)**	*Rep. Sutton*
HB 1196	**REDUCE WHOLESALE DRUG DISTRIBUTOR LICENSE FEE**	*Rep. Church*
HB 1269	**CHOWAN OCCUPANCY TAX CHANGES (FOR CONCURRENCE)**	*Rep. Spear*
HB 1820	**VARIOUS SATELLITE ANNEXATIONS (FOR CONCURRENCE)**	*Rep. Crawford*
HB 1839	**EXPAND HOMESTEAD EXEMPTION VIA TAX CREDIT**	*Reps. Allred, Cole, Gibson, & Moore*
HB 2445	**HALIFAX/AHOSKIE OCCUPANCY TAX (FOR CONCURRENCE)**	*Reps. L. Allen & Ed Jones*
HB 2818	**SALES TAX ON OFF-ROAD VEHICLES**	*Rep. West*
SB 881	**LAPSE IN LIABILITY INSURANCE**	*Sen. Garrou*
SB 1187	**TRYON PALACE FUND/INTEREST-BEARING**	*Sen. Bland*
SB 1348	**DORTCHES/RUTHERFORD COUNTY CHANGES**	*Sen. Swindell*
SB 1431	**BURGAW OCCUPANCY TAX**	*Sen. Soles*
SB 1487	**DENTAL HYGIENE LAW CHANGES**	*Sen. Nesbitt*

Adjournment

CORRECTED NOTICE:
HB 1752 – REMOVED; HB 2818 – ADDED

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

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

DAY & DATE: **Thursday, July, 13, 2006**

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

LOCATION: **Room 544, LOB**

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

HB 350 – MARTIN COUNTY OCCUPANCY TAX CHANGES – Rep. Stiller

HB 882 – OCRACOKE TOWNSHIP OCCUPANCY TAX – Rep. Sutton

HB 1196 – REDUCE WHOLESALE DRUG DISTRIBUTOR LICENSE FEE – Rep. Church

HB 1269 – CHOWAN OCCUPANCY TAX CHANGES – Rep. Spear

~~**HB 1752 – SALES TAX ON OFF-ROAD VEHICLES – Reps. Allred, Cole, & West**~~

HB 1820 – VARIOUS SATELLITE ANNEXATIONS – Rep. Crawford

HB 1839 – EXPAND HOMESTEAD EXEMPTION VIA TAX CREDIT – Reps. Allred, Cole, Gibson, & Moore

HB 2445 – HALIFAX/AHOSKIE OCCUPANCY TAX – Reps. L.Allen & Ed Jones

HB 2818 – SALES TAX ON OFF-ROAD VEHICLES – Rep. West

SB 881 – LAPSE IN LIABILITY INSURANCE – Sen. Garrou

SB 1187 – TRYON PALACE FUND/INTEREST-BEARING – Sen. Bland

SB 1348 – DORTCHES/RUTHERFORD COUNTY CHANGES – Sen. Swindell

SB 1431 – BURGAW OCCUPANCY TAX – Sen. Soles

SB 1487 – DENTAL HYGIENE LAW CHANGES – Sen. Nesbitt

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

I hereby certify this notice was filed by the committee clerk at the following offices at **5:40pm** on **July 12, 2006**:

X Principal Clerk

X Reading Clerk - House Chamber

Jason A. Cannon (Committee Clerk)

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

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

DAY & DATE: **Thursday, July, 13, 2006**

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

LOCATION: **Room 544, LOB**

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

HB 350 – MARTIN COUNTY OCCUPANCY TAX CHANGES – Rep. Stiller

HB 882 – OCRACOKE TOWNSHIP OCCUPANCY TAX – Rep. Sutton

HB 1196 – REDUCE WHOLESALE DRUG DISTRIBUTOR LICENSE FEE – Rep. Church

HB 1269 – CHOWAN OCCUPANCY TAX CHANGES – Rep. Spear

HB 1752 – SALES TAX ON OFF-ROAD VEHICLES – Reps. Allred, Cole, & West

HB 1820 – VARIOUS SATELLITE ANNEXATIONS – Rep. Crawford

HB 1839 – EXPAND HOMESTEAD EXEMPTION VIA TAX CREDIT – Reps. Allred, Cole, Gibson, & Moore

HB 2445 – HALIFAX/AHOSKIE OCCUPANCY TAX – Reps. L.Allen & Ed Jones

SB 881 – LAPSE IN LIABILITY INSURANCE – Sen. Garrou

SB 1187 – TRYON PALACE FUND/INTEREST-BEARING – Sen. Bland

SB 1348 – DORTCHES/RUTHERFORD COUNTY CHANGES – Sen. Swindell

SB 1431 – BURGAW OCCUPANCY TAX – Sen. Soles

SB 1487 – DENTAL HYGIENE LAW CHANGES – Sen. Nesbitt

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

I hereby certify this notice was filed by the committee clerk at the following offices at **2:10pm** on **July 12, 2006:**

X Principal Clerk
X Reading Clerk - House Chamber

Jason A. Cannon (Committee Clerk)

ATTACHMENT 2

VISITOR REGISTRATION SHEET

FINANCE — 2/13/06

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dana Simpson	Smith Anderson
Sam McEwen	DOR
Amy Schilder	Hobbs & Co
Tracy Kimbrell	Pearce Inc.
Veronica Carrington	Rep. William Wainwright Intern
Cameron Contrisano	Daily Bulletin
Wayne Goodwin	DOI
Ted Hamby	DOI
Barbara Sparks Dale	DOI
Paul Stock	NCSIA
	NCUA

VISITOR REGISTRATION SHEET

Finance — July 13 2006

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Anthony Allen	NCACC
Ryan Presley	Rep. Glazier
PW Chauncey	well Path
[illegible]	[illegible]
Rebecca Barringer	gov office
Caly Wiggins	gov.'s office
Lori Ann Harris	CAHA
Erin Riedy	CWMTF

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — July 13, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Doug Misiewicz	Capstrat
Steve Kane	NCMS
Joan Troy	NC HJRC
Angela Rone	NCMS
Jami Fitzgerald	NCFPC
Floyd Landis	Phonak
Larry Ham	NCGOST

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — July 13, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Johanna Reese	DOT
Betty Turner	BAC
Andy Ellen	NCRMA
Angie Harris	Maupin Taylor

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — July 13, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rick Zechini	NC Assoc. of Realtors
Andy Romanet	NCCM
Susan Williams	NW
Sandy Sands	WCSR
Suzanne Smith	[illegible]
Andrew Meeker	NCPAEC
Barbara Conklin	BBCOR
Paul Meyer	NCACC
Bruce Thompson	Parker Poe
Jim Dohm	ACS
Dan Jones	SA

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — July 13, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Angela Ford	NC Dept. of Insurance
Richard Linn	NC Dept. of Insurance
Michael Brohawn	NC Medical Group Managers
Tom Pollard	City of Wilmington
[illegible]	NZDS & NCPM
David Barnes	Poyner + Spruill
Lee Hodges	KCCH
[illegible]	[illegible]
R. Paul Williams	NCHBA
Ed Turlington	BPM HL
Alastair Maccoll	NCHBA

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S 1

SENATE BILL 1187

Short Title:	Tryon Palace Fund/Interest-Bearing.	(Public)
Sponsors:	Senator Bland.	
Referred to:	Finance.	

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO SPECIFY THE TRYON PALACE HISTORIC SITES AND GARDENS FUND AS A SPECIAL, INTEREST-BEARING TRUST FUND.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 121-21.1 reads as rewritten:

"**§ 121-21.1. Tryon Palace Historic Sites and Gardens Fund.**

(a) Fund. – The Tryon Palace Historic Sites and Gardens Fund is hereby created as a ~~special~~ special, interest-bearing, and nonreverting fund in the Division of Tryon Palace Historic Sites and Gardens. The Fund shall be treated as a special trust fund and shall be credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-69.3. The Fund shall be used for repair, renovation, expansion, and maintenance at Tryon Palace Historic Sites and Gardens.

(b) Disposition of Fees. – All entrance fee receipts shall be credited to the Tryon Palace Historic Sites and Gardens Fund.

(c) The Tryon Palace Commission shall submit to the Joint Legislative Commission on Governmental Operations, the House and Senate Appropriations Subcommittees on General Government, and the Fiscal Research Division by September 30 of each year a report on the Tryon Palace Historic Sites and Gardens Fund that shall include the source and amounts of all funds credited to the Fund and the purpose and amount of all expenditures from the Fund during the prior fiscal year."

SECTION 2. This act becomes effective July 1, 2006.

SENATE BILL 1187:
Tryon Palace Fund/Interest-Bearing

BILL ANALYSIS

Committee:	House Finance	**Date:**	July 12, 2006
Introduced by:	Sen. Bland	**Summary by:**	Cindy Avrette
Version:	First Edition		Committee Counsel

SUMMARY: Senate Bill 1187 would make The Tryon Palace Historic Sites and Gardens Fund an interest-bearing fund. The bill becomes effective July 1, 2006.

BILL ANALYSIS: The General Assembly created the Tryon Palace Historic Sites and Gardens Fund last session. The Fund is a non-reverting fund that consists of the entrance fee receipts. Senate Bill 1187 would also make this Fund interest-bearing. The Fund has approximately $499,445 in it. The rate of return realized on short term investments for the month of June was 3.39%.

S1187e1-SMRB

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☐ Committee Substitute for

SB 1187 A BILL TO BE ENTITLED AN ACT TO SPECIFY THE TRYON PALACE HISTORIC SITES AND GARDENS FUND AS A SPECIAL, INTEREST-BEARING TRUST FUND.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 3

HOUSE BILL 1820

Second Edition Engrossed 6/22/06

Senate Finance Committee Substitute Adopted 7/6/06

Short Title: Various Satellite Annexations. (Local)

Sponsors:

Referred to:

May 10, 2006

A BILL TO BE ENTITLED

AN ACT REMOVING THE CAP ON SATELLITE ANNEXATIONS FOR VARIOUS MUNICIPALITIES.

The General Assembly of North Carolina enacts:

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

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

...

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

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

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

HOUSE BILL 1820:
Various Satellite Annexations

BILL ANALYSIS

Committee:	House Finance	**Date:**	July 12, 2006
Introduced by:	Rep. Crawford	**Summary by:**	Cindy Avrette
Version:	Third Edition		Committee Counsel

SUMMARY: House Bill 1820 is in House Finance for a recommendation on whether the full House should concur in the Senate changes to the bill. The bill is a local bill that would exempt the Towns of Grimesland, Stem, and Stovall from the requirement for satellite annexation that the area to be annexed, when added to the area within all other satellite corporate limits, may not exceed 10% of the area within the primary corporate limits of the annexing city. The Senate removed the City of Roanoke Rapids and the Town of Weldon from the bill at the request of Sen. Holloman and added the Town of Stovall at the request of Rep. Crawford.

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

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

The fifth requirement is designed to further the legislative goal of not allowing annexations to undermine the notion of a city as a single, contiguous, and compact entity. In practice, however, the standard has proved to be a problem for many smaller cities, because one large development by itself may easily exceed the 10% limit. The General Assembly has excepted a significant number of cities and towns (at least 63) from this 10% rule by local act. The area to be annexed must continue to meet the other four criteria.

H1820e3-SMRB

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

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☒ Senate Committee Substitute for

HB 1820 A BILL TO BE ENTITLED AN ACT REMOVING THE CAP ON SATELLITE ANNEXATIONS FOR VARIOUS MUNICIPALITIES.

☒ With recommendation that the House concur.

(FOR JOURNAL USE ONLY)

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 3

HOUSE BILL 350*

Committee Substitute Favorable 3/16/05

Senate Finance Committee Substitute Adopted 7/7/06

Short Title: Martin County Occupancy Tax Changes. (Local)

Sponsors:

Referred to:

February 23, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE MARTIN COUNTY TO LEVY AN ADDITIONAL THREE PERCENT ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX AND TO MAKE OTHER ADMINISTRATIVE CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. S.L. 1991-80 reads as rewritten:

"**Section 1.** Occupancy Tax. – (a) Authorization and ~~scope.~~Scope. – The Martin County Board of Commissioners may ~~by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations, when furnished in furtherance of their nonprofit purpose, by summer camps, or by businesses that offer to rent no more than five units.

(a1) Authorization of Additional Tax. – In addition to the tax authorized by subsection (a) of this section, the Martin County Board of Commissioners may levy an additional room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. The levy, collection, administration, and repeal of the tax authorized by this subsection must be in accordance with the provisions of this section. Martin County may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

~~(b) Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by~~

~~the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

(c) Administration. ~~The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the fifteenth day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the fifteenth day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~ – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall be subject to and pay a penalty of ten dollars ($10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid. The board of commissioners may, for good cause shown, compromise or forgive the additional tax penalties imposed by this subsection.~~

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

(e) Distribution and ~~use~~Use of ~~tax revenue.~~Tax Revenue. – Martin County shall, on a ~~monthly~~quarterly basis, remit the net proceeds of the occupancy tax to the Martin County ~~Travel and~~ Tourism Development Authority. ~~The Authority may spend funds remitted to it under this subsection only to further the development of travel and tourism and cultural, recreational, and historic activities in Martin County through advertising and promotion, to sponsor tourist-oriented events and activities in Martin County, and to finance tourist-related capital activities and projects in Martin County. As used in this subsection, "net proceeds" means gross~~ The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Martin County and shall use the remainder for tourism-related expenditures.

The following definitions apply in this act:

(1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the ~~tax, which may~~tax, as determined by

the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross ~~proceeds.~~proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

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

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

~~(f) Effective date of levy. A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

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

"**Sec. 2.** Martin County ~~Travel and~~ Tourism Development Authority. – (a) Appointment and ~~membership.~~Membership. – When the board of commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating the Martin County ~~Travel and~~ Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide that the Authority shall be composed of the following 12 members:

(1) A Martin County Commissioner appointed by the Martin County Board of Commissioners.

(2) Two owners or operators of restaurants, motels, hotels, or other taxable accommodations in Martin County that have at least five units, nominated by representatives of this industry, both to be appointed by the Martin County Board of Commissioners.

(3) One member selected by the Martin County Chamber of Commerce to be appointed by the Martin County Board of Commissioners.

(4) One member appointed by the Martin County Board of Commissioners selected from the Martin County Economic Development Commission.

(5) Five members, one appointed by each member of the Martin County Board of Commissioners.
(6) One member appointed by the Martin County Board of Commissioners selected from the Martin County Historical Society.
(7) One member appointed by the Martin County Board of Commissioners selected from the Robersonville Downtown Merchants Association.

The appointees shall be made from throughout the County by the Martin County Board of Commissioners. At least one-third of the members must be individuals affiliated with businesses that collect the tax in the county and at least one-half of the members must be individuals currently active in the promotion of travel and tourism in the county. All members of the Authority shall serve without compensation. Vacancies shall be filled in the same manner as original appointments. Members appointed to fill vacancies shall serve for the remainder of the unexpired term. The Authority shall elect each year from its membership a Chair. No member may serve as Chair more than two one-year terms in succession. The Authority shall meet at the call of the Chair or of any three members and shall adopt rules of procedure to govern its meetings. The Finance Officer for Martin County shall be the ex officio finance officer of the Authority.

(b) Terms of office. – Members of the Authority shall serve three-year terms except that the Martin County Commissioner appointed pursuant to subdivision (a)(1) shall be appointed yearly by the chairman of the board of commissioners and initial appointees shall serve the following terms:

(1) The Martin County Commissioner appointed pursuant to subdivision (a)(1): one year.
(2) One representative of the motel and restaurant industry appointed pursuant to subdivision (a)(2): one year.
(3) One representative of the motel and restaurant industry appointed pursuant to subdivision (a)(2): three years.
(4) The representative of the Martin County Chamber of Commerce appointed pursuant to subdivision (a)(3): three years.
(5) The representative of the Martin County Economic Development Commission appointed pursuant to subdivision (a)(4): two years.
(6) Three members appointed by Martin County Commissioners pursuant to subdivision (a)(5): one year.
(7) Two representatives appointed by Martin County Commissioners pursuant to subdivision (a)(5): three years.
(8) The representative of the Martin County Historical Society appointed pursuant to subdivision (a)(6): two years.
(9) The representative of the Robersonville Downtown Merchants Association appointed pursuant to subdivision (a)(7): three years.

(c) Limitation on terms. – No member of the Authority shall serve more than two consecutive three-year terms.

(d) ~~Powers and duties. The Authority may contract with any person, firm, or agency to assist it in carrying out the purposes for which the tax proceeds levied by this~~

~~act may be expended.~~Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in this act. The Authority shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county. The board of county commissioners may from time to time determine an appropriate percentage not to exceed five percent (5%) of net proceeds that may be expended for administrative services.

(e) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

~~(f) Notwithstanding the provisions of this act, the board of commissioners may abolish the Martin County Travel and Tourism Authority and itself function and carry out the duties of the Authority provided in this act.~~

"**Sec. 3.** This act is effective upon ratification."

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

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

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

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☒Senate Committee Substitute for

HB 350 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE MARTIN COUNTY TO LEVY AN ADDITIONAL THREE PERCENT ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX AND TO MAKE OTHER ADMINISTRATIVE CHANGES.

☒ With recommendation that the House concur.

(FOR JOURNAL USE ONLY)

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1196
PROPOSED COMMITTEE SUBSTITUTE H1196-CSLAf-48 [v.1]

7/12/2006 11:29:58 AM

Short Title: Reduce Wholesale Drug Distributor License Fee. (Public)

Sponsors:

Referred to:

April 13, 2005

A BILL TO BE ENTITLED

AN ACT TO REDUCE THE WHOLESALE DRUG DISTRIBUTOR LICENSING FEE FOR SMALL BUSINESSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 106-145.4(b) reads as rewritten:

"(b) Fee. – An application for an initial license or a renewed license as a wholesale distributor shall be accompanied by a nonrefundable fee of five hundred dollars ($500.00) for a manufacturer or three hundred fifty dollars ($350.00) for any other person. However, an applicant whose wholesale distribution facility does not exceed 800 square feet of floor space shall pay a fee of one hundred dollars ($100.00)."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

HOUSE BILL 1196

Short Title:	Reduce Wholesale Drug Distributor License Fee.	(Public)
Sponsors:	Representative Church.	
Referred to:	Finance.	

April 13, 2005

A BILL TO BE ENTITLED

AN ACT TO REDUCE THE WHOLESALE DRUG DISTRIBUTOR LICENSING FEE FOR SMALL BUSINESSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 106-145.4(b) reads as rewritten:

"(b) Fee. – An application for an initial license or a renewed license as a wholesale distributor shall be accompanied by a nonrefundable fee of five hundred dollars ($500.00) for a manufacturer or three hundred fifty dollars ($350.00) for any other person. However, an applicant whose wholesale distribution facility does not exceed 2,000 square feet of floor space shall pay a fee of one hundred dollars ($100.00)."

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

HOUSE BILL 1196:
Reduce Wholesale Drug Distributor License Fee

BILL ANALYSIS

Committee:	House Finance	**Date:**	July 12, 2006
Introduced by:	Rep. Church	**Summary by:**	Martha Walston
Version:	PCS to First Edition H1196-CSLA		Committee Counsel

SUMMARY: The proposed committee substitute for House Bill 1196 would reduce the license fee for a wholesale distributor of prescription drugs if the applicant's wholesale distribution facility does not exceed 800 square feet of floor space. Instead of paying $500 for a manufacturer or $350 for any other applicant, the applicant's fee would be reduced to $100.

The original version reduced the fee if the applicant's facility did not exceed 2,000 square feet of floor space.

CURRENT LAW: The North Carolina Department of Agriculture and Consumer Services requires a wholesale distributor engaged in the wholesale distribution of prescription drugs in the State to obtain a license from the Commissioner. The license must be renewed annually and may cover multiple buildings and multiple operations at a single location. The purpose of this State licensing program is to enable wholesale distributors to comply with federal law. The licensing program requires wholesale distributors to maintain records and inventories of all transactions, and to adhere to written procedures for the receipt, security, storage, inventory, and distribution of prescription drugs. The licensee's facility must also meet specific requirements.

An application for an initial license or a renewed license as a wholesale distributor must be accompanied by a nonrefundable $500 fee for a manufacturer or $350 for any other person. These fees are used to conduct the State licensing program. The Wholesale Distributor Advisory Committee reviews all rules that are proposed and adopted by the Commissioner, and advises the Commissioner on enforcement of the program. The Committee consists of five members appointed by the Commissioner.

A manufacturer is defined as a person engaged in manufacturing, preparing, propagating, compounding, processing, packaging, repackaging, or labeling a prescription drug.

"Wholesale distributor" is defined as a person who is engaged in the wholesale distribution of prescription drugs. The term includes manufacturer, repackers, own-label distributors, private-label distributors, jobbers, brokers, warehouses, independent wholesale drug traders, and retail pharmacies that conduct wholesale distributions. The term does not include a person who acquires prescription drugs commingled with other goods as part of a recovery operation and who disposes of such drugs under the supervision of the Department. A warehouse includes a warehouse of a manufacturer or wholesale distributor, a chain drug warehouse, and a wholesale drug warehouse.

BILL ANALYSIS: The proposed committee substitute for House Bill 1196 would allow a reduced annual fee of $100 for an applicant whose wholesale distribution facility does not exceed 800 square feet of floor space.

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

H1196e1-SMLA-CSLA

GENERAL ASSEMBLY OF NORTH CAROLINA
Session 2005

FISCAL ANALYSIS MEMORANDUM

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

DATE: July 12, 2006

TO: Representative Church

FROM: Brenna Erford
Fiscal Research Division

RE: House Bill 1196 (Proposed Committee Substitute to 1st Edition)

FISCAL IMPACT

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

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES:					
General Fund	**No Impact to General Fund**				
Department of Agriculture	**Negligible decrease in fee revenues; see Assumptions & Methdology**				
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Agriculture

EFFECTIVE DATE: When law.

BILL SUMMARY: The proposed committee substitute for House Bill 1196 would reduce the license fee for a wholesale distributor of prescription drugs if the applicant's wholesale distribution facility does not exceed 800 square feet of floor space. Instead of paying $500 for a manufacturer or $350 for any other applicant, the applicant's fee would be reduced to $100.

ASSUMPTIONS AND METHODOLOGY: An application for an initial license or a renewed license as a wholesale distributor must be accompanied by a nonrefundable $500 fee for a manufacturer or $350 for any other person. These fees are used to conduct the State licensing

program. The proposed committee substitute to House Bill 1196 would reduce the licensure fee to $100 for a facility of 800 square feet or less.

The Department of Agriculture is aware of only one wholesaler whose distribution facility is less than 800 square feet; therefore, the fiscal impact of this change is negligible.

SOURCES OF DATA: Department of Agriculture

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA
Session 2005

FISCAL ANALYSIS MEMORANDUM

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

DATE: July 12, 2006

TO: Representative Church

FROM: Brenna Erford
Fiscal Research Division

RE: House Bill 1196 (Proposed Committee Substitute to 1st Edition)

FISCAL IMPACT

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

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES:					
General Fund	No Impact to General Fund				
Department of Agriculture	Negligible decrease in fee revenues; see Assumptions & Methdology				
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Agriculture

EFFECTIVE DATE: When law.

BILL SUMMARY: The proposed committee substitute for House Bill 1196 would reduce the license fee for a wholesale distributor of prescription drugs if the applicant's wholesale distribution facility does not exceed 800 square feet of floor space. Instead of paying $500 for a manufacturer or $350 for any other applicant, the applicant's fee would be reduced to $100.

ASSUMPTIONS AND METHODOLOGY: An application for an initial license or a renewed license as a wholesale distributor must be accompanied by a nonrefundable $500 fee for a manufacturer or $350 for any other person. These fees are used to conduct the State licensing

program. The proposed committee substitute to House Bill 1196 would reduce the licensure fee to $100 for a facility of 800 square feet or less.

The Department of Agriculture is aware of only one wholesaler whose distribution facility is less than 800 square feet; therefore, the fiscal impact of this change is negligible.

SOURCES OF DATA: Department of Agriculture

TECHNICAL CONSIDERATIONS: None

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

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

☐ Committee Substitute for

HB 1196 A BILL TO BE ENTITLED AN ACT TO REDUCE THE WHOLESALE DRUG DISTRIBUTOR LICENSING FEE FOR SMALL BUSINESSES.

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

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

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

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 4

HOUSE BILL 1269

Committee Substitute Favorable 8/30/05
Third Edition Engrossed 8/30/05
Senate Finance Committee Substitute Adopted 7/6/06

Short Title: Chowan Occupancy Tax Changes. (Local)

Sponsors:

Referred to:

April 19, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CHOWAN COUNTY TO LEVY AN ADDITIONAL TWO PERCENT ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX AND TO MAKE OTHER ADMINISTRATIVE CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 174 of the 1989 Session Laws reads as rewritten:

"**Section 1.** Occupancy ~~tax.~~Tax. – (a) Authorization and ~~scope.~~Scope. – The Chowan County Board of Commissioners may ~~by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under ~~G.S. 105-164.4(3).~~G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious ~~organizations.~~organizations when furnished in furtherance of their nonprofit purpose.

(a1) Authorization of Additional Tax. – In addition to the tax authorized by subsection (a) of this section, the Chowan County Board of Commissioners may levy an additional room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. The levy, collection, administration, and repeal of the tax authorized by this subsection must be in accordance with the provisions of this section. Chowan County may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

~~(b) Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The~~

~~tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects the occupancy tax levied under this section may deduct from the amount remitted to the county a discount of three percent (3%) of the amount collected.~~

(c) Administration. ~~The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~ A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied in this section.

~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall pay a penalty of ten dollars ($10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid. The board of commissioners may, for good cause shown, compromise or forgive the penalties imposed by this subsection.~~

~~Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars ($1,000), imprisonment not to exceed six months, or both.~~

(e) Distribution and ~~use of tax revenue.~~Use of Tax Revenue. – Chowan County shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Chowan Tourism Development Authority. ~~The Authority may spend funds remitted to it under this subsection only to promote travel and tourism in Chowan County, to sponsor tourist-oriented events and activities in Chowan County, and to finance tourist-related capital projects in Chowan County. As used in this subsection, "net proceeds" means gross~~ The Authority shall use at least two-thirds of the funds remitted to it under this section to promote travel and tourism in Chowan County and the remainder for tourism-related expenditures.

The following definitions apply in this act:

(1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance ~~officer.~~officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in these activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Authority, are designed to increase the use of lodging facilities, meeting facilities, and convention facilities in a county by attracting tourists or business travelers to the county. The term includes tourism-related capital expenditures.

~~(f) Effective date of levy. A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

~~(g) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Chowan County Board of Commissioners. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.~~

"Sec. 2. Tourism Development Authority. – (a) Appointment and ~~membership.~~Membership. – When the board of commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. ~~The resolution shall provide for the membership of the Authority including the members' qualifications and terms of office, and for the filling of vacancies on the Authority.~~At least one-third of the members must be individuals affiliated with businesses that collect the tax in the county and at least one-half must be individuals currently active in the promotion of travel and tourism in the county. The board of commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The county shall serve as the fiscal agent of the Authority. The Finance Officer for Chowan County shall be the ex officio finance officer of the Authority.

(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act. The Authority shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

"Sec. 3. This act is effective upon ratification."

SECTION 2. G.S. 153A-155(g) reads as rewritten:

"(g) This section applies only to Alleghany, Anson, Brunswick, Buncombe, Cabarrus, Camden, Carteret, Chowan, Craven, Cumberland, Currituck, Dare, Davie, Duplin, Durham, Franklin, Granville, Halifax, Madison, Montgomery, Nash, New Hanover, Pasquotank, Pender, Person, Randolph, Richmond, Rockingham, Rowan, Scotland, Stanly, Transylvania, Tyrrell, Vance, and Washington Counties, to Watauga County District U, and to the Township of Averasboro in Harnett County."

SECTION 3. This act is effective when it becomes law.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒ Senate Committee Substitute for

HB 1269 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE CHOWAN COUNTY TO LEVY AN ADDITIONAL TWO PERCENT ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX AND TO MAKE OTHER ADMINISTRATIVE CHANGES.

☒ With recommendation that the House concur.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 882

Senate Finance Committee Substitute Adopted 7/6/06

Short Title: Ocracoke Township Occupancy Tax. (Local)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT CREATING A TAXING DISTRICT IN OCRACOKE TOWNSHIP FOR THE PURPOSE OF AUTHORIZING THE LEVY OF A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Occupancy Tax. – The Ocracoke Township Taxing District is created. It is coterminous with Ocracoke Township in Hyde County. The Ocracoke Township Taxing District is a body politic and corporate and has the power to carry out the provisions of this act. The Hyde County Board of Commissioners shall serve ex officio as the governing body of the district, and the officers of the county shall serve as the officers of the governing body of the district. A simple majority of the governing body constitutes a quorum, and approval by a majority of those present is sufficient to determine any matter before the governing body, if a quorum is present.

SECTION 2. Authorization and Scope. – The governing body of Ocracoke Township Taxing District may levy a room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the district that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales or room occupancy tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 3. Administration. – A tax levied under this act shall be levied, administered, collected, and repealed as provided in G.S. 153A-155, as if it were a county. The penalties provided in G.S. 153A-155 apply to a tax levied under this act.

SECTION 4. Distribution and Use of Tax Revenue. – Ocracoke Township Taxing District shall, on a quarterly basis, distribute the net proceeds of the occupancy tax to the Ocracoke Township Tourism Development Authority created pursuant to Section 5 of this act. The Authority shall use at least two-thirds of the proceeds distributed to it to promote travel and tourism in the district and shall use the remainder

for tourism-related expenditures in the district. In accordance with the North Carolina Constitution and the United States Constitution, the tax proceeds may be used only for the direct benefit of Ocracoke Township. None of the proceeds may be used to promote travel or tourism in areas within Hyde County that are outside of the district or for tourism-related expenditures in the county that are outside of the district.

The following definitions apply in this act:

(1) Net proceeds. – Gross proceeds less the cost to the district of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a district or to attract tourists or business travelers to the district. The term includes tourism-related capital expenditures.

SECTION 5.(a) Ocracoke Township Tourism Development Authority. – Appointment and Membership. – The Board of Commissioners of Hyde County shall adopt a resolution creating the Ocracoke Township Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The Tourism Development Authority shall have five members in addition to the Finance Officer. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals affiliated with businesses that collect the tax in the district, and at least one-half of the members must be individuals currently active in the promotion of travel and tourism in the district. The Board of Commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Hyde County shall be the ex officio finance officer of the Authority.

SECTION 5.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 4 of this act. The Authority shall promote travel and tourism in the district and make tourism-related expenditures in the district.

SECTION 5.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Hyde County Board of Commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

SECTION 6. G.S. 153A-215(g) reads as rewritten:

"(g) This section applies only to Alleghany, Anson, Brunswick, Buncombe, Cabarrus, Camden, Carteret, Craven, Cumberland, Currituck, Dare, Davie, Duplin, Durham, Franklin, Granville, Halifax, Madison, Montgomery, Nash, New Hanover, Pasquotank, Pender, Person, Randolph, Richmond, Rockingham, Rowan, Scotland, Stanly, Transylvania, Tyrrell, Vance, and Washington Counties, to Watauga County District U, and to the Township of Averasboro in Harnett ~~County.~~County and the Ocracoke Township Taxing District."

SECTION 7. This act is effective when it becomes law.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒ Senate Committee Substitute for

HB 882 A BILL TO BE ENTITLED AN ACT CREATING A TAXING DISTRICT IN OCRACOKE TOWNSHIP FOR THE PURPOSE OF AUTHORIZING THE LEVY OF A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

☒ With recommendation that the House concur.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 2

SENATE BILL 1487*

Health Care Committee Substitute Adopted 6/14/06

Short Title: Dental Hygiene Law Changes. (Public)

Sponsors:

Referred to:

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS TO ACCEPT, IN ADDITION TO EXAMINATIONS CONDUCTED BY THE BOARD, THE RESULTS OF OTHER BOARD-APPROVED REGIONAL OR NATIONAL INDEPENDENT THIRD-PARTY CLINICAL EXAMINATIONS OF APPLICANTS SEEKING A LICENSE TO PRACTICE AS A DENTAL HYGIENIST, AND AUTHORIZING THE BOARD TO CHARGE THE ACTUAL COST OF THE THIRD-PARTY TESTING SERVICE, AS RECOMMENDED BY THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-223(a) reads as rewritten:

"(a) The Board is authorized and empowered to:

(1) Conduct examinations for licensure,

(2) Issue licenses and provisional licenses,

(3) Issue annual renewal certificates, ~~and~~

(4) Renew expired ~~licenses.~~ licenses, and

(5) Contract with a regional or national testing agency to conduct clinical examinations. Prior to entering a contract with a regional or national testing agency, the Board shall evaluate the agency based on the following criteria:

a. The number of states that recognize the results of the testing agency's examination.

b. The cost to the applicant of the examination.

c. How long the testing agency has been conducting examinations.

d. Whether the examination includes procedures performed on human subjects as part of the assessment of clinical competencies."

SECTION 2. G.S. 90-224 reads as rewritten:

"**§ 90-224. Examination.**

(a) The applicant for licensure must be of good moral character, have graduated from an accredited high school or hold a high school equivalency certificate duly issued by a governmental agency or unit authorized to issue the same, and be a graduate of a program of dental hygiene in a school or college approved by the Board.

(b) The Board shall have the authority to establish in its rules and regulations:

(1) The form of application;

(2) The time and place of examination;

(3) The type of examination;

(4) The qualifications for passing the examination.

(b1) The Board also may grant a license to an applicant who is found to have passed an examination given by a Board-approved regional or national dental hygiene testing agency, provided that the Board deems the regional or national examination to be substantially equivalent to or an improvement upon the examination given by the Board, and the applicant meets the other qualifications set forth in this Article.

(c) The Department of Justice may provide a criminal record check to the Board for a person who has applied for a new or renewal license through the Board. The Board shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Board shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subsection."

SECTION 3. G.S. 90-232 reads as rewritten:

"**§ 90-232. Fees.**

(a) In order to provide the means of carrying out and enforcing the provisions of this Article and the duties devolving upon the North Carolina State Board of Dental Examiners, it is authorized to charge and collect fees established by its rules not exceeding the following:

(1) Each applicant for examination $350.00

(2) Each renewal certificate, which fee shall be annually fixed by the Board and not later than November 30 of each year it shall give written notice of the amount of the renewal fee to each dental hygienist licensed to practice in this State by mailing such notice to the last address of record with the Board of each such dental hygienist 250.00

(3) Each restoration of license 150.00

(4) Each provisional license 150.00
(5) Each certificate of license to a resident dental hygienist desiring to change to another state or territory 50.00
(6) Annual fee to be paid upon license renewal to assist in funding programs for impaired dental hygienists 80.00
(7) Each license by credentials ..... 1,500.

(b) In all instances where the Board uses the services of a regional or national testing agency for preparation, administration, or grading of examinations, the Board may require applicants to pay the actual cost of the testing agency in lieu of the fee authorized in subdivision (a)(1) of this section.

(c) In no event may the annual fee imposed on dental hygienists to fund the impaired dental hygienists program exceed the annual fee imposed on dentists to fund the impaired dentist program. All fees shall be payable in advance to the Board and shall be disposed of by the Board in the discharge of its duties under this Article."

SECTION 4. The North Carolina State Board of Dental Examiners shall continue to conduct clinical examinations for applicants seeking a license to practice dental hygiene until at least September 30, 2007. No applicant for a dental hygiene license shall be required to take a Board-approved regional or national independent third-party clinical examination prior to September 30, 2007.

SECTION 5. Notwithstanding any provision to the contrary, the North Carolina State Board of Dental Examiners may accept any application for the dental hygiene clinical examination to be conducted on June 8, 2006, if the application was received on or before March 31, 2006.

SECTION 6. This act becomes effective July 1, 2006.

SENATE BILL 1487:
Dental Hygiene Law Changes

BILL ANALYSIS

Committee:	House Finance	**Date:**	July 12, 2006
Introduced by:	Sen. Nesbitt	**Summary by:**	Cindy Avrette
Version:	Second Edition		Committee Counsel

SUMMARY: Senate Bill 1487 would authorize the State Board of Dental Examiners to accept the results of Board-approved regional or national independent third party clinical examinations for applicants seeking a dental hygiene license. The bill also authorizes the Board to charge applicants the actual cost of the third-party testing service. This bill is a recommendation of the Joint Legislative Administrative Procedure Oversight Committee.

CURRENT LAW: The North Carolina Dental Hygiene Act governs the licensure of dental hygienist. The Act authorizes the Board to conduct examinations for licensure and to establish rules for:

- The form of application;
- The time and place of examination;
- The type of examination; and
- The qualifications for passing the examination.

The Board does not have specific authorization to contract with third parties to provide examinations. Session Law 2005-366 amended the Dental Practice Act to authorize the Board to use outside testing agencies for the examination of dentists. How ever, no such statutory amendment was made to the Dental Hygiene Act.

BILL ANALYSIS: The bill would authorize the Board to contract with third-party testing agencies to conduct clinical exams for dental hygiene applicants. Its sets a number of criteria to be considered by the Board before entering such a contract, including:

- The number of states that recognize the test
- The cost of the examination
- How long the testing agency had been conducting exams
- Whether the exam includes procedures performed on human subjects

The Board may require applicants to pay the actual cost of the third party exam.

The bill also directs the Board to continue to conduct its own exams until at least September 30, 2007. The Board may accept applications for this year's exam if they were received on or before March 31, 2006.

EFFECTIVE DATE: This act becomes effective July 1, 2006.

S1487e2-SMRB

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: Senate Bill 1487 (Second Edition)

SHORT TITLE: Dental Hygiene Law Changes.

SPONSOR(S): Senator Nesbitt

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES:					
General Fund			**No Impact to General Fund**		
Board of Dental Examiners			**See Assumptions & Methodology**		
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Board of Dental Examiners

EFFECTIVE DATE: July 1, 2006

BILL SUMMARY: Senate Bill 1487 authorizes the North Carolina State Board of Dental Examiners to accept, in addition to examinations conducted by the board, the results of other board-approved regional or national independent third-party clinical examinations of applicants seeking a license to practice as a dental hygienist. The bill also authorizes the board to charge the actual cost of the third-party testing service, as recommended by the joint legislative administrative procedure oversight committee.

ASSUMPTIONS AND METHODOLOGY: Under current law, the North Carolina Board of Dental Examiners is authorized to charge each applicant for examination a fee not to exceed $350. Senate Bill 1487 authorizes the Board to require applicants to pay a fee charged by a third-party testing company in lieu of this statutorily authorized fee.

The Board has had 250 applicants for examination since January 1, 2006. In previous years, the Board has used its own staff to administer the test. In 2006, they contracted with test administrators to administer in lieu of staff.

Although the Board will be collecting less revenue in the form of examination fees, they will not be responsible for remitting payment to third-party testing companies, so the net impact of this change to the Board is revenue-neutral.

SOURCES OF DATA: NC Board of Dental Examiners

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Brenna Erford

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: July 5, 2006

Signed Copy Located in the NCGA Principal Clerk's Offices

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒Committee Substitute for

SB 1487 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS TO ACCEPT, IN ADDITION TO EXAMINATIONS CONDUCTED BY THE BOARD, THE RESULTS OF OTHER BOARD-APPROVED REGIONAL OR NATIONAL INDEPENDENT THIRD-PARTY CLINICAL EXAMINATIONS OF APPLICANTS SEEKING A LICENSE TO PRACTICE AS A DENTAL HYGIENIST, AND AUTHORIZING THE BOARD TO CHARGE THE ACTUAL COST OF THE THIRD-PARTY TESTING SERVICE, AS RECOMMENDED BY THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE 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 _____.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 2445

Senate Finance Committee Substitute Adopted 7/6/06

Short Title: Halifax/Ahoskie Occupancy Tax. (Local)

Sponsors:

Referred to:

May 24, 2006

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE TOWN OF AHOSKIE TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX AND TO AMEND THE OCCUPANCY TAX IN HALIFAX COUNTY.

The General Assembly of North Carolina enacts:

PART I. HALIFAX OCCUPANCY TAX

SECTION 1. Chapter 377 of the 1987 Session Laws, as amended by S.L. 2005-46, reads as rewritten:

"**Section 1.** Occupancy ~~tax.~~Tax. – (a) Authorization and ~~scope.~~Scope. – The Halifax County Board of Commissioners may levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the county that is subject to sales tax imposed by the State under G.S 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

(a1) Authorization of ~~additional tax.~~Additional Tax. – In addition to the tax authorized by subsection (a) of this section, the Halifax County Board of Commissioners may levy an additional room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of accommodations taxable under subsection (a) of this section. The levy, collection, administration, and repeal of the tax authorized by this subsection ~~must~~shall be in accordance with the provisions of this section. Halifax County may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

(b) Administration. – A tax levied under this section ~~must~~shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

(c) Distribution and ~~use~~Use of ~~tax revenue.~~Tax Revenue. – Halifax County ~~must,~~shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the

Halifax County Tourism Development Authority. The Authority ~~must~~shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Halifax County and ~~must~~shall use the remainder for tourism-related expenditures.

The following definitions apply to this subsection:

(1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of the gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in the county by attracting tourists or business travelers to the county. The term includes tourism-related capital expenditures.

"**Sec. 2.** Tourism Development Authority. – (a) Appointment and ~~membership.~~Membership. – When the Halifax County Board of Commissioners adopts a resolution levying a room occupancy tax under this act, it ~~must~~shall also adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution ~~must~~shall provide for the membership of the Authority including the members' qualifications and terms of office, and for the filling of vacancies on the Authority. At least one-fifth of the members must be individuals who are affiliated with businesses that collect the tax in the county, and at least ~~three-fourths~~one-half of the members must be individuals who are currently active in the promotion of travel and tourism in the county. ~~The Authority must designate one member as chair and one member as treasurer.~~The board of commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority ~~must~~shall meet at the call of the chair and ~~must~~shall adopt rules of procedure to govern its meetings. The Finance Officer for Halifax County shall be the ex officio finance officer of the Authority.

(b) Duties. – The Authority must expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act. The Authority must promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

(c) Reports. – The Authority ~~must~~shall report quarterly and at the close of the fiscal year to the Halifax County Board of ~~County~~ Commissioners on its receipts and

expenditures for the preceding quarter and for the year in such detail as the Board may require.

"**Sec. 3.** This act is effective upon ratification."

PART II. TOWN OF AHOSKIE OCCUPANCY TAX

SECTION 2.1. Occupancy Tax. – (a) Authorization and Scope. – The Ahoskie Town Council may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 2.1.(b) Administration. – A tax levied under this part shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this part.

SECTION 2.1.(c) Distribution and Use of Tax Revenue. – The Town of Ahoskie shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Town of Ahoskie Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this part to promote travel and tourism in the town and shall use the remainder for tourism-related expenditures.

The following definitions apply in this part:

(1) Net proceeds. – Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a town or to attract tourists or business travelers to the town. The term includes tourism-related capital expenditures.

SECTION 2.2. Town of Ahoskie Tourism Development Authority. – (a) Appointment and Membership. – When the Ahoskie Town Council adopts a resolution levying a room occupancy tax under this part, it shall also adopt a resolution creating a town Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals affiliated with businesses that collect the tax in the town, and at least one-half of the

members must be individuals currently active in the promotion of travel and tourism in the town. The town council shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for the Town of Ahoskie shall be the ex officio finance officer of the Authority.

SECTION 2.2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this part for the purposes provided in this part. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

SECTION 2.2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Ahoskie Town Council on its receipts and expenditures for the preceding quarter and for the year in such detail as the town council may require.

PART III. UNIFORM PROVISIONS

SECTION 3. G.S. 160A-215(g) reads as rewritten:

"(g) This section applies only to Beech Mountain District W, to the Cities of Belmont, Elizabeth City, Eden, Gastonia, Goldsboro, Greensboro, High Point, Kings Mountain, Lexington, Lincolnton, Lumberton, Monroe, Mount Airy, Reidsville, Roanoke Rapids, Shelby, Statesville, Washington, and Wilmington, to the Towns of Ahoskie, Beech Mountain, Blowing Rock, Carolina Beach, Carrboro, Franklin, Kure Beach, Jonesville, Mooresville, North Topsail Beach, Selma, Smithfield, St. Pauls, Troutman, West Jefferson, Wilkesboro, and Wrightsville Beach, and to the municipalities in Avery and Brunswick Counties."

PART IV. EFFECTIVE DATE

SECTION 4. This act is effective when it becomes law.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒ Senate Committee Substitute for

HB 2445 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE TOWN OF AHOSKIE TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX AND TO AMEND THE OCCUPANCY TAX IN HALIFAX COUNTY.

☒ With recommendation that the House concur.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1348

House Committee Substitute Favorable 6/29/06

PROPOSED HOUSE COMMITTEE SUBSTITUTE S1348-CSLA-47 [v.2]

7/12/2006 5:17:17 PM

Short Title: Rutherford County Changes. (Local)

Sponsors:

Referred to:

May 15, 2006

A BILL TO BE ENTITLED

AN ACT REPEALING THE LOCAL MODIFICATIONS OF G.S. 153A-335 PERTAINING TO THE REGULATION OF SUBDIVISIONS IN RUTHERFORD COUNTY AND THEREBY SUBJECTING THE COUNTY TO FULL APPLICATION OF THE GENERAL LAW.

The General Assembly of North Carolina enacts:

SECTION 1. Sections 2 and 3 of Chapter 313 of the 1979 Session Laws are repealed.

SECTION 2. This act applies to Rutherford County only.

SECTION 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 2

SENATE BILL 1348

House Committee Substitute Favorable 6/29/06

Short Title: Dortches/Rutherford County Changes. (Local)

Sponsors:

Referred to:

May 15, 2006

A BILL TO BE ENTITLED

AN ACT TO REMOVE CERTAIN DESCRIBED PROPERTY FROM THE CORPORATE LIMITS OF THE TOWN OF DORTCHES AND REPEALING THE LOCAL MODIFICATIONS OF G.S. 153A-335 PERTAINING TO THE REGULATION OF SUBDIVISIONS IN RUTHERFORD COUNTY AND THEREBY SUBJECTING THE COUNTY TO FULL APPLICATION OF THE GENERAL LAW.

The General Assembly of North Carolina enacts:

SECTION 1. The following described property is removed from the corporate limits of the Town of Dortches:

Commencing at a magnetic nail located at the intersection of the centerlines of Benvenue Road (NC 43) and South Browntown Road (SR 1527); thence S 52°41'51"E 517.69 feet to an existing iron axle on the northern right-of-way of Benvenue Road, the southwest corner of Falls Road Baptist Church property, Tract A, Map Book 16 Page 391; thence along the common line between Falls Road Baptist Church and James E. Wells, Deed Book 1857 Page 805, N 04°41'26"E 172.85 feet to an iron pipe; thence along the common line between Falls Road Baptist Church and Janet D. Beabout, Deed Book 1674 Page 245, N 04°53'16"E 205.66 feet to an angle iron found; thence along the common line between Falls Road Baptist Church and property now or formerly owned by Sally L. Stancil, et al, N 05°00'54"E 466.60 feet to an iron pipe set, the POINT OF BEGINNING; thence continuing along the same line N 05°00'54"E 506.25 feet to an existing iron axle found, the northwest corner of Tract A, Map Book 16 Page 391; thence along the common line between the church and James R. Byrd and Cheryl D. Byrd, tenants in common, recorded in Deed Book 1900 Page 392, S 85°16'40"E 268.71 feet to an iron pipe set; thence along the existing jurisdictional boundary between the City of Rocky Mount and the town of Dortches a curve being concave to the right and having a radius of 7,900 feet and a chord bearing and distance of S 32°54'31"W 574.36 feet to the point of beginning and containing 1.61 acres and being a portion of Tract A, Map Book 16 Page 391, Stony Creek Township,

Nash County Registry, as shown on map by Mack Gay Associates, P.A. November 7, 2005, Project Number P050335.

SECTION 2. This act shall have no effect upon the validity of any liens of the Town of Dortches for ad valorem taxes or special assessments outstanding before the effective date of this act. Such liens may be collected or foreclosed upon after the effective date of this act as though the property was still within the corporate limits of the Town of Dortches.

SECTION 3. Sections 2 and 3 of Chapter 313 of the 1979 Session Laws are repealed.

SECTION 4. Section 3 of this act applies to Rutherford County only.

SECTION 5. This act becomes effective June 30, 2006.

SENATE BILL 1348:
Rutherford County Changes

BILL ANALYSIS

Committee:	House Finance	**Date:**	July 11, 2006
Introduced by:	Sen. Swindell	**Summary by:**	Martha Walston Committee Counsel
Version:	PCS to Second Edition S1348-CSLA		

SUMMARY: The proposed committee substitute for Senate Bill 1348 repeals the modifications made to the statutes regulating subdivisions as they apply to Rutherford County.

The 2nd edition of SB 1348 also removed certain property from the corporate limits of the Town of Dortches. The Dortches deannexation was enacted this session in S.L. 2006-56 (House Bill 2656).

CURRENT LAW: Part 2 of Article 18 of Chapter 153A (Counties) sets out a county's authority to regulate subdivisions. In S.L. 1979-313, this statutory authority was modified for Rutherford County by exempting certain divisions of land from the statutory definition of "subdivision".

BILL ANALYSIS: The proposed committee substitute for Senate Bill 1348 would repeal these modifications to the statutes governing subdivision regulations. The effect would be that Rutherford County would be subject to the statutes regulating subdivisions.

EFFECTIVE DATE: The act is effective when it becomes laws.

S1348e2-SMLA-CSLA

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 2818
PROPOSED COMMITTEE SUBSTITUTE H2818-CSLY-114 [v.1]

7/12/2006 5:36:20 PM

Short Title: Sales Tax on Off-Road Vehicles. (Public)

Sponsors:

Referred to:

May 30, 2006

A BILL TO BE ENTITLED

AN ACT TO ALLOW AN EXEMPTION FROM THE SALES AND USE TAX ON CERTAIN SALES OF MOTORIZED ALL-TERRAIN VEHICLES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 105-164.3(23a) is recodified as G.S. 105-164.3(23b).

SECTION 1.(b) G.S. 105-164.3 is amended by adding a new subdivision to read:

"**§ 105-164.3. Definitions.**

The following definitions apply in this Article:

...

(23a) Motorized all-terrain vehicle. – Defined in G.S. 14-159.3."

SECTION 2. G.S. 105-164.13 is amended by adding a new subdivision to read:

"**§ 105-164.13. Retail sales and use tax.**

The sale at retail and the use, storage, or consumption in this State of the following tangible personal property and services are specifically exempted from the tax imposed by this Article:

...

(56) Sales of mopeds and motorized all-terrain vehicles to an individual with valid proof of out-of-state residence when the vehicle is removed from this State for use outside this State within three business days of purchase. Sellers of vehicles exempt under this subdivision shall attach to and keep with the bill of sale a notarized form signed by the purchaser certifying that the vehicle was picked up within three business days of purchase for use outside this State."

SECTION 3. This act becomes effective July 1, 2007, and applies to sales made on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 2818

Short Title:	Sales Tax on Off-Road Vehicles.	(Public)
Sponsors:	Representative West.	
Referred to:	Finance.	

May 30, 2006

A BILL TO BE ENTITLED

AN ACT TO ALLOW AN EXEMPTION FROM THE SALES AND USE TAX ON CERTAIN SALES OF MOTORIZED ALL-TERRAIN VEHICLES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-164.3 is amended by adding a new subdivision to read:

"**§ 105-164.3. Definitions.**

The following definitions apply in this Article:

...

(23a) Motorized all-terrain vehicle. – Defined in G.S. 14-159.3."

SECTION 2. G.S. 105-164.13 is amended by adding a new subdivision to read:

"**§ 105-164.13. Retail sales and use tax.**

The sale at retail and the use, storage, or consumption in this State of the following tangible personal property and services are specifically exempted from the tax imposed by this Article:

...

(54) Sales of mopeds and motorized all-terrain vehicles to an individual with valid proof of out-of-state residence when the vehicle is removed from this State for use outside this State within three days of purchase. Sellers of vehicles exempt under this subdivision shall attach to and keep with the bill of sale a notarized form signed by the purchaser certifying that the vehicle was picked up within three days of purchase for use outside this State."

SECTION 3. This act becomes effective July 1, 2006, and applies to sales made on or after that date.

HOUSE BILL 2818:
Sales Tax on Off-Road Vehicles

BILL ANALYSIS

Committee:	House Finance	**Date:**	July 12, 2006
Introduced by:	Rep. West	**Summary by:**	Canaan Huie
Version:	PCS to First Edition H2818-CSLY-114		Committee Counsel

SUMMARY: This bill would exempt from the sales and use tax sales to an individual with valid proof of out-of-State residence of motorized all-terrain vehicles if those vehicles are removed from the State for use outside the State within three days of the sale.

CURRENT LAW: Under current North Carolina law, sales of tangible personal property are subject to State and local sales and use taxes. There are numerous exceptions to the general applicability of the sales and use tax. Motor vehicles are not subject to the sales and use tax. A "motor vehicle" is a vehicle designed primarily for use upon the highways and is either self-propelled or propelled by a self-propelled vehicle. The definition of a motor vehicle does not include a moped or motorized all-terrain vehicle because those vehicles are not designed for use on the highways.

BILL ANALYSIS: This bill would exempt from the sales and use tax sales to an individual with valid proof of out-of-State residences of mopeds or motorized all-terrain vehicles that are removed from the State for use outside of the State within three days of sale. The bill would require the seller of the moped or motorized all-terrain vehicle to attach to and keep with the bill of sale a notarized form signed by the purchaser stating that the vehicle will be removed from the State within three business days of pick-up for use outside this State. Many states impose a use tax on products used in the state with a credit for any sales tax paid to another state. Whether the moped or motorized all-terrain vehicle is taxed in the state to which it is removed will depend on that state's law.

EFFECTIVE DATE: This bill would become effective January 1, 2007, and would apply to sales made on or after that date.

H2818e1-SMLY-CSLY-114

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: July 12, 2006

TO: Representative Allred

FROM: Brenna Erford
Fiscal Research Division

RE: House Bill 2818 (Proposed Committee Substitute to 1st Edition)

FISCAL IMPACT

Yes ( ) **No ( )** **No Estimate Available (X)**

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES	**See Assumptions and Methodology**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Department of Revenue.

EFFECTIVE DATE: July 1, 2007, and applies to sales made on or after that date.

BILL SUMMARY: Currently moped and motorized all-terrain vehicles (ATV) are subject to the state's sales and use taxes. The legislation exempts these items from tax if the vehicle is removed from the state for use outside the state within three days of purchase.

ASSUMPTIONS AND METHODOLOGY: Currently no data is available from the Department of Revenue concerning the sales tax revenue generated by sales of mopeds and ATVs in the state, for transport out of state. Because mopeds do not have to be registered with the state, no data is available from the Division of Motor Vehicles on these vehicles. The industry association, the Specialty Vehicle Institute of America, reports that there were approximately 22,000 new ATVs sold in North Carolina in 2004. No estimate is available on the number of mopeds purchased in

the state. It is also not possible to estimate what proportion of the ATVs and mopeds sold in the state are purchased for use outside of state, within three days of purchase. As such, no fiscal estimate is possible on the legislation.

NOTE: Such a change to the sales sourcing rules would likely take North Carolina out of compliance with the National Streamlined Sales Tax effort. This initiative standardizes definitions and technical issues related to sales taxation in an attempt to allow states to collect more of the tax due on remote sales. In addition, it would be difficult for the retailer to accurately ascertain where the vehicle would be taken within three days of purchase.

SOURCES OF DATA: Specialty Vehicle Institute of America.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Linda Struyk Millsaps and Brenna Erford

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

HB 2818 A BILL TO BE ENTITLED AN ACT TO ALLOW AN EXEMPTION FROM THE SALES AND USE TAX ON CERTAIN SALES OF MOTORIZED ALL-TERRAIN VEHICLES.

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1431
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1431-CSSVx-104 [v.1]

Short Title: Burgaw/New Hanover/Wilmington Occupancy Tax. (Local)

Sponsors:

Referred to:

May 17, 2006

A BILL TO BE ENTITLED

AN ACT (1) TO AUTHORIZE THE TOWN OF BURGAW TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX; AND (2) TO CREATE THE WILMINGTON CONVENTION CENTER DISTRICT; TO MODIFY THE DISTRIBUTION OF COUNTY AND CITY OCCUPANCY TAX PROCEEDS DERIVED FROM ACCOMMODATIONS LOCATED IN THE DISTRICT; TO CREATE THE NEW HANOVER COUNTY DISTRICT U; TO AUTHORIZE THE NEW HANOVER COUNTY DISTRICT U TO LEVY A THREE PERCENT OCCUPANCY TAX; AND TO MAKE ADMINISTRATIVE CHANGES TO THE WILMINGTON OCCUPANCY TAX.

The General Assembly of North Carolina enacts:

BURGAW OCCUPANCY TAX

SECTION 1. Occupancy tax. – (a) Authorization and Scope. – The Board of Commissioners of the Town of Burgaw may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 1.(c) Distribution and Use of Tax Revenue. – The Town of Burgaw shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Burgaw Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Burgaw and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

(1) Net proceeds. – Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Burgaw Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a town or to attract tourists or business travelers to the town. The term includes tourism-related capital expenditures.

SECTION 2. Tourism Development Authority. – (a) Appointment and Membership. – When the Board of Commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating the Burgaw Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members shall be individuals who are affiliated with businesses that collect the tax in the town and at least three-fourths of the members shall be individuals who are currently active in the promotion of travel and tourism in the town. The Board of Commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for the Town of Burgaw shall be the ex officio finance officer of the Authority.

SECTION 2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

SECTION 2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Board of Commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the Board of Commissioners may require.

SECTION 3. G.S. 160A-215(g) reads as rewritten:

"(g) This section applies only to Beech Mountain District W, to the Cities of Belmont, Elizabeth City, Eden, Gastonia, Goldsboro, Greensboro, High Point, Kings Mountain, Lexington, Lincolnton, Lumberton, Monroe, Mount Airy, Reidsville,

Roanoke Rapids, Shelby, Statesville, Washington, and Wilmington, to the Towns of Beech Mountain, Blowing Rock, Burgaw, Carolina Beach, Carrboro, Franklin, Kure Beach, Jonesville, Mooresville, North Topsail Beach, Selma, Smithfield, St. Pauls, Troutman, West Jefferson, Wilkesboro, and Wrightsville Beach, and to the municipalities in Avery and Brunswick Counties."

NEW HANOVER OCCUPANCY TAX CHANGES

SECTION 4. Section 3 of S.L. 2002-138 reads as rewritten:

"**SECTION 3.** Section 36.1 of Chapter 908 of the 1983 Session Laws is recodified as Section ~~32(b)~~31(b) of Chapter 908 of the 1983 Session Laws."

SECTION 5. Part VIII of Chapter 908 of the 1983 Session Laws, as amended by Chapter 987 of the 1983 Session Laws, Chapters 726 and 971 of the 1985 Session Laws, Chapter 540 of the 1995 Session Laws, S.L. 2002-138, and S.L. 2003-166, reads as rewritten:

"Part VIII. New Hanover Occupancy Tax.

"Sec. 31. Levy of Tax. – (a) Two-Percent Tax. – The New Hanover County Board of Commissioners may levy a room occupancy and tourism development tax of two percent (2%) of the gross receipts derived from the rental of any ~~accommodations~~ room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that ~~are~~ is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, benevolent, or religious ~~organizations.~~organizations when furnished in furtherance of their nonprofit purpose.

(b) Additional One-Percent Tax. – In addition to the tax authorized by subsection (a) of this section, the New Hanover County Board of Commissioners may levy a room occupancy and tourism development tax of one percent (1%) of the gross receipts derived from the rental of accommodations taxable under that subsection. The levy, collection, administration, and repeal of the tax authorized by this subsection, and the use of tax revenue from a tax levied under this subsection, shall be in accordance with Sections 31 through 35 of this Part. New Hanover County may not levy a tax under this subsection unless it also levies a tax under subsection (a) of this section.

"Sec. 32. Definitions. – The following definitions apply in this Part:

(1) Beach nourishment. – The placement of sand, from other sand sources, on a beach or dune by mechanical means and other associated activities that are in conformity with the North Carolina Coastal Management Program along the shorelines of the Atlantic Ocean of North Carolina and connecting inlets for the purpose of widening the beach to benefit public recreational use and mitigating damage and erosion from storms to inland property. The term includes expenditures for any of the following:

a. Costs directly associated with qualifying for projects either contracted through the U.S. Army Corps of Engineers or otherwise permitted by all appropriate federal and State agencies.

b. The nonfederal share of the cost required to construct these projects.
c. The costs associated with providing enhanced public beach access.
d. The costs of associated nonhardening activities such as the planting of vegetation, the building of dunes, and the placement of sand fences.

(2) Beach towns. – Carolina Beach, Kure Beach, and Wrightsville Beach.

(3) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(4) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

(5) Tourism-related expenditures. – Expenditures that, in the judgment of the Authority, are designed to increase the use of lodging facilities, meeting facilities, and convention facilities in an area by attracting tourists or business travelers to the area. The term includes tourism-related capital expenditures and beach nourishment.

"Sec. 33. Administration of Tax. – A tax levied under this ~~act~~ Part shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this ~~act.~~ Part.

"Sec. 34. Establishment of the Cape Fear Coast Convention and Visitors Bureau as a Tourism Development Authority. – (a) Creation. – As soon as practicable before February 1, 2003, the board of commissioners shall adopt a resolution creating the Cape Fear Coast Convention and Visitors Bureau, a tourism development authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The county shall transfer to the Authority upon its creation all the assets of the county's convention and visitors bureau.

(b) Membership. – The Authority shall be composed of the following 15 voting members: five ex officio members or their designees and 10 additional members appointed by the board of commissioners.

(1) The ex officio members are listed below. Each ex officio member may designate to serve in the member's place an individual who serves on the governing body of the county or municipality that the member represents.
a. The chair of the board of county commissioners.
b. The mayor of the City of Wilmington.
c. The mayors of the beach towns.

(2) The board of county commissioners shall appoint the members listed below. The resolution creating the Authority must provide for staggered terms for the appointed members.

a. The owner or manager of a hotel of 150 rooms or more in the town of Wrightsville Beach. This individual must have experience in promoting travel and tourism.

b. The owner or manager of a hotel in the town of Carolina Beach and the owner or manager of a hotel in the town of Kure Beach. These individuals must have experience in promoting travel and tourism.

c. The owner or manager of a hotel of 150 rooms or more in the City of Wilmington. This individual must have experience in promoting travel and tourism.

d. The owner or manager of a hotel of fewer than 150 rooms in the City of Wilmington. This individual must have experience in promoting travel and tourism.

e. The owner or manager of a bed and breakfast facility. This individual must have experience in promoting travel and tourism.

f. The owner or manager of a company that manages and rents more than 100 vacation rental properties. This individual must have experience in promoting travel and tourism.

g. A representative of a tourism attraction in the county who is actively involved in the promotion of travel and tourism in the county.

h. A representative of the Wilmington Chamber of Commerce who is actively involved in promoting travel and tourism in the county.

i. The owner or manager of a restaurant business in the county.

(c) Administration. – The board of commissioners shall determine the compensation, if any, to be paid to members of the Authority. The resolution creating the Authority must designate one member of the Authority to serve as the initial chair. The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. During the first quarter of each calendar year beginning in 2004, the Authority must meet to elect a chair from among its members. The Finance Officer for New Hanover County shall be the ex officio finance officer of the Authority.

(d) Duties. – The Authority shall expend the net proceeds of the taxes distributed to it for the purposes provided by law. The Authority shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

(e) Reports. – The Authority shall report quarterly and at the close of the fiscal year on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require. It shall file these reports with the board of commissioners and with the governing body of each municipality in the county.

"Sec. 34.1. Establishment of the Wilmington Convention Center District. – The area in Wilmington, North Carolina, extending from the Isabel S. Holmes Bridge to the Cape Fear Memorial Bridge with Fourth Street on one side and the Cape Fear River on the other side shall be known as the Wilmington Convention Center District.

"Sec. 35. Disposition of Taxes Collected. –

(a) Except as otherwise provided in subsection (b) of this section, New Hanover County shall distribute the net proceeds of the occupancy taxes levied under Section 31 of this ~~Part~~ part as provided in this ~~section:~~subsection:

(1) Proceeds Derived from Accommodations in the Convention Center District. – The net proceeds derived from accommodations located in the Wilmington Convention Center District shall be distributed as follows:

a. Forty percent (40%) shall be remitted quarterly to the convention center account, established in accordance with S.L. 2002-139, as amended by this act. The proceeds in the account shall be remitted quarterly to and used by the City of Wilmington only in accordance with Section 1(d) of S.L. 2002-139, as amended by this act.

b. Thirty percent (30%) shall be deposited in a special fund, the cash balance of which shall be deposited at interest or invested in accordance with G.S. 159-30. These funds shall be used only for beach nourishment.

c. Thirty percent (30%) shall be distributed on a quarterly basis to the Tourism Development Authority. These funds shall be used only to promote travel and tourism throughout New Hanover County. These funds shall not be used to plan, construct, operate, or maintain a civic center, convention center, public auditorium, or like facility.

(2) Proceeds Derived from Accommodations Outside the Convention Center District. – The net proceeds derived from accommodations located outside the Wilmington Convention Center District shall be distributed as follows:

a. Sixty percent (60%) of the net proceeds shall be deposited in a special fund, the cash balance of which shall be deposited at interest or invested in accordance with G.S. 159-30. These funds shall be used only for beach nourishment.

b. Forty percent (40%) of the net proceeds shall be distributed on a quarterly basis to the Tourism Development Authority. These funds shall be used only to promote travel and tourism throughout New Hanover County. These funds shall not be used to plan, construct, operate, or maintain a civic center, convention center, public auditorium, or like facility.

(b) If construction has not begun on a public convention center in the Wilmington Convention Center District by July 1, 2008, then the Wilmington

Convention Center District is dissolved, and the City of Wilmington must return to the county any funds it received under this section that have not been spent or committed. The county shall use these returned funds and all future tax proceeds derived from occupancy taxes levied under Section 31 of this part as follows:

(1) Sixty percent (60%) of the net proceeds shall be deposited in a special fund, the cash balance of which shall be deposited at interest or invested in accordance with G.S. 159-30. These funds shall be used only for beach nourishment.

(2) Forty percent (40%) of the net proceeds shall be distributed on a quarterly basis to the Tourism Development Authority. These funds shall be used only to promote travel and tourism throughout New Hanover County. These funds shall not be used to plan, construct, operate, ~~maintain, or in any way promote~~ or maintain a civic center, convention center, public auditorium, or like facility."

SECTION 6.(a) Section 35 of Part VIII of Chapter 908 of the 1983 Session Laws, as amended by Chapter 987 of the 1983 Session Laws, Chapter 971 of the 1985 Session Laws, Chapter 540 of the 1995 Session Laws, S.L. 2002-138, and Section 5 of this act, reads as rewritten:

"Sec. 35. Disposition of Taxes Collected. –

(a) Except as otherwise provided in subsection (b) of this section, New Hanover County shall distribute the net proceeds of the occupancy taxes levied under Section 31 of this part as provided in this subsection:

(1) Proceeds Derived from Accommodations in the Convention Center District. – One hundred percent (100%) of the~~The~~ net proceeds derived from accommodations located in the Wilmington Convention Center District shall be ~~distributed as follows:~~

~~a.~~ ~~Forty percent (40%) shall be~~ remitted quarterly to the convention center account, established in accordance with S.L. 2002-139, as amended by this act. The proceeds in the account shall be remitted quarterly to and used by the City of Wilmington only in accordance with Section 1(d) of S.L. 2002-139, as amended by this act.

~~b.~~ ~~Thirty percent (30%) shall be deposited in a special fund, the cash balance of which shall be deposited at interest or invested in accordance with G.S. 159-30. These funds shall be used only for beach nourishment.~~

~~c.~~ ~~Thirty percent (30%) shall be distributed on a quarterly basis to the Tourism Development Authority. These funds shall be used only to promote travel and tourism throughout New Hanover County. These funds shall not be used to plan, construct, operate, or maintain a civic center, convention center, public auditorium, or like facility.~~

(2) Proceeds Derived from Accommodations Outside the Convention Center District. – The net proceeds derived from accommodations

located outside the Wilmington Convention Center District shall be distributed as follows:

a. Sixty percent (60%) of the net proceeds shall be deposited in a special fund, the cash balance of which shall be deposited at interest or invested in accordance with G.S. 159-30. These funds shall be used only for beach nourishment.

b. Forty percent (40%) of the net proceeds shall be distributed on a quarterly basis to the Tourism Development Authority. These funds shall be used only to promote travel and tourism throughout New Hanover County. These funds shall not be used to plan, construct, operate, or maintain a civic center, convention center, public auditorium, or like facility.

(b) If construction has not begun on a public convention center in the Wilmington Convention Center District by July 1, 2008, then the Wilmington Convention Center District is dissolved, and the City of Wilmington must return to the county any funds it received under this section that have not been spent or committed. The county shall use these returned funds and all future tax proceeds derived from occupancy taxes levied under Section 31 of this part as follows:

(1) Sixty percent (60%) of the net proceeds shall be deposited in a special fund, the cash balance of which shall be deposited at interest or invested in accordance with G.S. 159-30. These funds shall be used only for beach nourishment.

(2) Forty percent (40%) of the net proceeds shall be distributed on a quarterly basis to the Tourism Development Authority. These funds shall be used only to promote travel and tourism throughout New Hanover County. These funds shall not be used to plan, construct, operate, or maintain a civic center, convention center, public auditorium, or like facility."

SECTION 6.(b) This section becomes effective July 1, 2008, and applies to room occupancy and tourism development taxes levied on and after that date.

NEW HANOVER COUNTY DISTRICT U

SECTION 7.(a) New Hanover County District U Created. – New Hanover County District U is created as a taxing district. Its jurisdiction consists of that part of New Hanover County that is located outside of incorporated areas within the county. New Hanover County District U is a body politic and corporate and has the power to carry out the provisions of this section. The New Hanover County Board of Commissioners shall serve ex officio as the governing body of the district, and the officers of the county shall serve as the officers of the governing body of the district. A simple majority of the governing body constitutes a quorum, and approval by a majority of those present is sufficient to determine any matter before the governing body, if a quorum is present.

SECTION 7.(b) Authorization and Scope. – The governing body of New Hanover County District U may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation

furnished by a hotel, motel, inn, tourist camp, or similar place within the district that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales or room occupancy tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious institutions or nonprofit organizations when furnished in furtherance of their nonprofit purpose.

SECTION 7.(c) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155 as if New Hanover County District U were a county. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

SECTION 7.(d) Distribution and Use of Tax Revenue. – New Hanover County District U shall deposit one hundred percent (100%) of the net proceeds of the room occupancy and tourism development tax levied under this section into a special fund, the cash balance of which shall be deposited at interest or invested in accordance with G.S. 159-30. These funds shall be used only for beach nourishment. In accordance with the North Carolina Constitution and the United States Constitution, the tax proceeds may be used only for the direct benefit of the jurisdiction of New Hanover District U. None of the proceeds may be used for beach nourishment in areas within New Hanover County that are outside of the district.

SECTION 7.(e) G.S. 153A-155(g) reads as rewritten:

"(g) This section applies only to Alleghany, Anson, Brunswick, Buncombe, Cabarrus, Camden, Carteret, Craven, Cumberland, Currituck, Dare, Davie, Duplin, Durham, Franklin, Granville, Halifax, Madison, Montgomery, Nash, New Hanover, New Hanover County District U, Pasquotank, Pender, Person, Randolph, Richmond, Rockingham, Rowan, Scotland, Stanly, Transylvania, Tyrrell, Vance, and Washington Counties, to Watauga County District U, and to the Township of Averasboro in Harnett County."

WILMINGTON OCCUPANCY TAX CHANGES

SECTION 8. Section 1 of S.L. 2002-139 reads as rewritten:

"**SECTION 1.** Occupancy tax. – (a) Authorization and Scope. – If New Hanover County has created a Tourism Development Authority pursuant to Part VIII of Chapter 908 of the 1983 Session Laws, as amended, the Wilmington City Council may, by resolution, levy a ~~local~~ room occupancy and tourism development tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the city that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

Before adopting a resolution levying a tax under this section, the Wilmington City Council must hold a public hearing on the question. The City Council must give at least 15 days' public notice of the hearing, including details on the proposed uses of the tax proceeds. After adopting the resolution, the City Council must immediately forward a copy of the resolution to the New Hanover County Board of Commissioners and the

county manager. A tax levied under this subsection shall become effective no earlier than February 1, 2003.

"**SECTION 1.(b)** Administration. – New Hanover County shall collect and administer a tax levied under this section. Except as otherwise provided in this section, a tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

"**SECTION 1.(c)** Definitions. – The following definitions apply in this section:

~~(1) Downtown Wilmington. – The area consisting of the Central Business District, the National Register Historic District, and the area extending to the Holmes Bridge and the Cape Fear River in the city of Wilmington, North Carolina.~~

(2) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(3) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

(4) Tourism Development Authority or Authority. – The Authority created by New Hanover County pursuant to Part VIII of Chapter 908 of the 1983 Session Laws, as amended.

(5) Wilmington Convention Center District. – The district established pursuant to Section 34.1 of Part VIII of Chapter 908 of the 1983 Session Laws, as amended, and consisting of the area in Wilmington, North Carolina, extending from the Isabel S. Holmes Bridge to the Cape Fear Memorial Bridge with Fourth Street on one side and the Cape Fear River on the other side.

"**SECTION 1.(c1)** Use of Tax Revenue. – If a tax is levied under this section, New Hanover County shall create a convention center account. The county shall remit quarterly the net proceeds of a room occupancy and tourism development tax levied under this section as follows:

(1) Proceeds Derived from Accommodations in the Convention Center District. – The net proceeds derived from accommodations located in the Wilmington Convention Center District shall be distributed as follows:

a. Forty percent (40%) shall be remitted quarterly to the convention center account, established in accordance with this subsection. The proceeds in the account shall be remitted

quarterly to and used by the City of Wilmington only in accordance with subsection (d) of this section.

b. Thirty percent (30%) shall be deposited in a special fund, the cash balance of which shall be deposited at interest or invested in accordance with G.S. 159-30. These funds shall be used only for beach nourishment.

c. Thirty percent (30%) shall be distributed on a quarterly basis to the Tourism Development Authority. These funds shall be used only to promote travel and tourism throughout New Hanover County. These funds shall not be used to plan, construct, operate, maintain, or in any way promote a civic center, convention center, public auditorium, or like facility.

(2) Proceeds Derived from Accommodations Outside the Convention Center District. – One hundred percent (100%) of the net proceeds derived from accommodations located outside the Wilmington Convention Center District shall be distributed to the convention center account.

"**SECTION 1.(d)** Use of ~~Tax Revenue.~~ Funds in Convention Center Account. ~~If a tax is levied under this section, New Hanover County shall create a convention center account. The county shall remit the net proceeds of a tax levied under this section quarterly to the convention center account.~~ Funds in the convention center account, established under Section 1(c1) of this act, including interest or investment income on the account, may be used only as provided in this subsection:

(1) The county shall hold the funds in the convention center account, including interest or investment income, until one or more of the conditions provided in this subsection have been met. When any of the conditions provided in subdivision (2), (3), or (4) of this subsection has been met, the proceeds shall be used as provided in that subdivision.

(2) If, at the end of three years after the first levy of a tax under this section, the City of Wilmington has not demonstrated to the satisfaction of a Tourism Development Authority created by the county pursuant to a local act of the General Assembly that all financing and development arrangements for a convention center have been completed, the county shall remit all funds in the convention center account to the Tourism Development Authority. Thereafter, all tax proceeds remitted to the convention center account shall be remitted quarterly to the Tourism Development Authority. The Authority shall use these funds only to promote travel and tourism. For the purpose of this subdivision, completion of financing and development arrangements includes, at a minimum, obtaining financing commitments for construction, entering into contracts for construction and management, and securing the necessary land for the project.

(3) If, within three years after the first levy of a tax under this section, the City of Wilmington demonstrates to the satisfaction of a Tourism Development Authority created by the county pursuant to a local act of the General Assembly that all financing and development arrangements for a convention center have been completed, the county shall remit all funds in the convention center account to the City of Wilmington. Thereafter, except as provided in subdivision (4) of this subsection, all tax proceeds remitted to the convention center account shall be remitted quarterly to the City of Wilmington. The City of Wilmington may use the funds only for construction, financing, operation, promotion, and maintenance of the convention center. For the purpose of this subdivision, completion of financing and development arrangements includes, at a minimum, obtaining financing commitments for construction, entering into contracts for construction and management, and securing the necessary land for the project.

(4) If the condition set out in subdivision (3) of this subsection has been ~~met~~ met, but ~~within four years after the first levy of a tax under this section,~~ the City of Wilmington fails to demonstrate by July 1, 2008, to the satisfaction of the Tourism Development Authority that construction has begun on a convention center in Downtown Wilmington, then the city must return to the county any funds it received under this subsection that have not been spent or committed. The county shall use these funds and any tax proceeds remitted thereafter to the convention center account only to promote travel and tourism in the city. If the county has created a Tourism Development Authority pursuant to a local act of the General Assembly, the county must remit the funds and future tax proceeds to the Tourism Development Authority. The Authority shall use these funds only to promote travel and tourism in the city.

"**SECTION 1.(e)** Reports. – Each entity responsible for administering and spending the proceeds of a tax levied under this section must each annually publish a detailed, audited report on its receipts and expenditures of the occupancy tax proceeds during the preceding year. The text of the report must be included in the minutes of the entity's governing body and placed on a public web site, and must be made available in hard copy upon request."

SECTION 9.(a) Section 1(c1) of S.L. 2002-139, as amended by Section 8 of this act, reads as rewritten:

"**SECTION 1.(c1)** Use of Tax Revenue. – If a tax is levied under this section, New Hanover County shall create a convention center account. The county shall remit quarterly one hundred percent (100%) of the net proceeds of a tax levied under this section ~~as follows:~~

~~(1) Proceeds Derived from Accommodations in the Convention Center District. The net proceeds derived from accommodations located in~~

~~the Wilmington Convention Center District, established in Section 34.1 of this part, shall be distributed as follows:~~

~~a.~~ ~~Forty percent (40%) shall be remitted quarterly~~ to the convention center account, established in accordance with this subsection. The proceeds in the account shall be remitted quarterly to and used by the City of Wilmington only in accordance with subsection (d) of this section.

~~b. Thirty percent (30%) shall be deposited in a special fund, the cash balance of which shall be deposited at interest or invested in accordance with G.S. 159-30. These funds shall be used only for beach nourishment.~~

~~c. Thirty percent (30%) shall be distributed on a quarterly basis to the Tourism Development Authority. These funds shall be used only to promote travel and tourism throughout New Hanover County. These funds shall not be used to plan, construct, operate, maintain, or in any way promote a civic center, convention center, public auditorium, or like facility.~~

~~(2) Proceeds Derived from Accommodations Outside the Convention Center District. One hundred percent (100%) of the net proceeds derived from accommodations located outside the Wilmington Convention Center District shall be distributed to the convention center account.~~"

SECTION 9.(b) This section becomes effective July 1, 2008, and applies to room occupancy and tourism development taxes levied on and after that date.

REPORTING REQUIREMENT

SECTION 10. Reporting Requirement. – The New Hanover Tourism Development Authority and the City of Wilmington shall report to the General Assembly by July 1, 2008, and annually thereafter, on the collection and distribution of occupancy tax proceeds, including how the amended distribution formula authorized by this act is working, on the progress of the construction of the convention center, and on any other issues related to the use of occupancy tax proceeds in New Hanover County and the City of Wilmington as the General Assembly deems appropriate.

EFFECTIVE DATE

SECTION 11. Sections 1 through 3 of this act are effective when they become law. Except as otherwise provided, the remainder of this act becomes effective September 1, 2006, and applies to room occupancy and tourism development taxes levied on and after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 1431

Short Title:	Burgaw Occupancy Tax.	(Local)
Sponsors:	Senator Soles.	
Referred to:	Finance.	

May 17, 2006

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE TOWN OF BURGAW TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Occupancy tax. – (a) Authorization and Scope. – The Board of Commissioners of the Town of Burgaw may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 1.(c) Distribution and Use of Tax Revenue. – The Town of Burgaw shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Burgaw Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Burgaw and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

(1) Net proceeds. – Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract

tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of Burgaw Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a town or to attract tourists or business travelers to the town. The term includes tourism-related capital expenditures.

SECTION 2. Tourism Development Authority. – (a) Appointment and Membership. – When the Board of Commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating the Burgaw Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members shall be individuals who are affiliated with businesses that collect the tax in the town and at least three-fourths of the members shall be individuals who are currently active in the promotion of travel and tourism in the town. The Board of Commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for the Town of Burgaw shall be the ex officio finance officer of the Authority.

SECTION 2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

SECTION 2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Board of Commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the Board of Commissioners may require.

SECTION 3. Administrative provisions. – G.S. 160A-215(g) reads as rewritten:

"(g) This section applies only to Beech Mountain District W, to the Cities of Belmont, Elizabeth City, Eden, Gastonia, Goldsboro, Greensboro, High Point, Kings Mountain, Lexington, Lincolnton, Lumberton, Monroe, Mount Airy, Reidsville, Roanoke Rapids, Shelby, Statesville, Washington, and Wilmington, to the Towns of Beech Mountain, Blowing Rock, Burgaw, Carolina Beach, Carrboro, Franklin, Kure Beach, Jonesville, Mooresville, North Topsail Beach, Selma, Smithfield, St. Pauls, Troutman, West Jefferson, Wilkesboro, and Wrightsville Beach, and to the municipalities in Avery and Brunswick Counties."

SECTION 4. This act is effective when it becomes law.

SENATE BILL 1431:
Burgaw/New Hanover/Wilmington Occupancy Tax

BILL ANALYSIS

Committee:	House Finance	**Date:**	July 13, 2006
Introduced by:	Sen. Soles	**Summary by:**	Trina Griffin
Version:	PCS to First Edition S1431-CSSVx-104		Committee Counsel

SUMMARY: ***Senate Bill 1431 authorizes the Town of Burgaw to levy a 3% room occupancy tax. Two-thirds of the proceeds would be used to promote travel and tourism and one-third would be used for tourism-related expenditures. This bill conforms to the guidelines supported by the North Carolina Travel and Tourism Coalition and adhered to by the House Finance Committee.***

The Proposed Committee Substitute adds provisions relating to the New Hanover County and City of Wilmington occupancy taxes. This PCS differs from the PCS discussed in House Finance on July 11, 2006 in that the previous PCS provided an extension of time for Wilmington to meet certain contingencies in order to retain occupancy tax proceeds for the construction of a convention center whereas this PCS maintains the current law. This PCS still contains an extension of time to July 1, 2008 for the beginning of construction (see pages 11-12 of the PCS).

CURRENT LAW: The Town of Burgaw currently has no authority to levy a room occupancy tax. It is located in Pender County, which is authorized to levy a 3% tax. Under this bill, the total rate of occupancy tax in the Town of Burgaw would be 6%.

BILL ANALYSIS: Senate Bill 1431 authorizes the Town of Burgaw to levy a room occupancy tax of up to 3%. The proceeds must be remitted to a town Tourism Development Authority (TDA), which must use at least two-thirds of the proceeds to promote travel and tourism and the remainder for tourism-related expenditures. These administrative and use provisions conform to the uniform guidelines referenced above and detailed in the chart below:

UNIFORM OCCUPANCY TAX PROVISIONS
Rate – The county tax rate cannot exceed 6% and the city tax rate, when combined with the county rate, cannot exceed 6%.
Use – Two-thirds of the proceeds must be used to promote travel and tourism and the remainder must be used for tourism related expenditures.
Definitions The term "net proceeds", "promote travel and tourism", and "tourism related expenditures" are defined terms.
Administration – The net revenues must be administered by a local tourism development authority that has the authority to determine how the tax proceeds will be used, is created by a local ordinance, and at least 1/2 of the members must be currently active in the promotion of travel and tourism in the county and 1/3 of the members must be affiliated with organizations that collect the tax.
Costs of Collection – The taxing authority may retain from the revenues its actual costs of collection, not to exceed 3% of the first $500,000 collected each year plus 1% of the remainder collected each year.

BACKGROUND: Since 1983, the General Assembly has authorized many units of local government to levy a room occupancy tax. In several instances, the General Assembly has authorized both a county and a city within that county to impose an occupancy tax. The rate of tax, the use of the tax proceeds, the administration of the tax, and the body with the authority to determine how the tax proceeds will be spent vary considerably. Over the past several years, there has been a greater effort to make the occupancy taxes

uniform. In 1997, the General Assembly enacted uniform municipal and county administrative provisions for occupancy tax legislation – G.S. 153A-155 and G.S. 160A-215. These provisions provide uniformity in the areas of levy, administration, collection, repeal, and penalties.

The North Carolina Travel and Tourism Coalition has a policy statement for legislation authorizing local occupancy taxes. Many of the principles contained in its statement are similar to the ones established by a House Finance subcommittee on Occupancy Taxes in 1993.

PROPOSED COMMITTEE SUBSTITUTE: The Proposed Committee Substitute adds provisions relating to the New Hanover and Wilmington occupancy tax provisions as follows:

- Modifies the distribution of the New Hanover County and City of Wilmington occupancy tax proceeds, effective September 1, 2006.
- Creates a new taxing district consisting of the unincorporated areas of New Hanover County for the purpose of levying a 3% room occupancy and tourism development tax to be used for beach nourishment.
- Changes the date by which Wilmington must demonstrate to the TDA that construction has begun on a convention center in order to retain occupancy tax proceeds remitted to it for that purpose.
- Adds an annual reporting requirement requiring that the New Hanover TDA and the City of Wilmington report to the General Assembly on the collection and distribution of occupancy tax proceeds and the progress of the convention center.

CURRENT LAW: New Hanover County is authorized to levy a 3% room occupancy and tourism development tax. Sixty percent (60%) of the net proceeds are deposited into a special fund to be used only for beach nourishment. Forty percent (40%) of the net proceeds are remitted to the Tourism Development Authority and used to promote travel and tourism.

The City of Wilmington is authorized to levy a 3% room occupancy and tourism development tax, which is collected by the county. One hundred percent (100%) of the net proceeds are remitted to a convention center account. If, by the end of three years after the first levy of a room occupancy tax, the City of Wilmington has demonstrated to the TDA that all development and financing arrangements for a convention center have been completed, the county must remit the funds in the account to the City of Wilmington. The city may use the funds only for the construction, financing, operation, promotion, and maintenance of the convention center. Within four years after the first levy of the occupancy tax, the City of Wilmington must further demonstrate that construction has begun on the convention center. If either of these conditions is not met, the city is required to return to the TDA all funds remitted to it. The TDA must use the funds to promote travel and tourism in the city. A room occupancy tax was first levied in the City of Wilmington in March of 2003.

BILL ANALYSIS: The Proposed Committee Substitute for Senate Bill 1431 adds the following:

- Creates the "Wilmington Convention Center District" defined as the area in Wilmington, North Carolina extending from the Isabel S. Holmes Bridge to the Cape Fear Memorial Bridge with Fourth Street on one side and the Cape Fear River on the other side.
- Creates New Hanover County District U as a taxing district consisting of the unincorporated areas of the county for the purpose of levying a 3% room occupancy and tourism development tax.

- Changes from "four years from the date of the first levy of a tax" (March 2007) to "July 1, 2008" as the date by which the City of Wilmington must demonstrate to the county TDA that it has begun construction of a convention center.
- Establishes a reporting requirement requiring that the New Hanover TDA and the City of Wilmington annually report to the General Assembly, beginning July 1, 2008, on the collection and distribution of occupancy tax proceeds, including how the amended distribution formula is working and on the progress of the construction of the convention center.
- Modifies the distribution formula for **both** the New Hanover and the Wilmington occupancy tax as follows:

Origin of Tax	Sept. 1, 2006–June 30, 2008	July 1, 2008 Forward
Wilmington Convention Center District 3% county + 3% city = 6% tax	40% = Convention center account 30% = Beach nourishment 30% = TDA (for promotion)	100% = Convention center account 0% = Beach nourishment 0% = TDA (for promotion)
Outside Convention Center District (but within city limits) 3% county + 3% city = 6% tax	3% county tax = • 60% beach nourishment • 40% TDA (for promotion)	3% county tax = • 60% beach nourishment • 40% TDA (for promotion)
	3% city tax = • 100% convention center	3% city tax = 100% convention center
New Hanover County District U (unincorporated area of the county) 3% county + 3% district = 6% tax	3% county tax = • 60% beach nourishment • 40% TDA (for promotion)	3% county tax = • 60% beach nourishment • 40% TDA (for promotion)
	3% district tax = • 100% beach nourishment	3% district tax = 100% beach nourishment

EFFECTIVE DATE: Sections 1 through 3 of this act are effective when they become law. Except as otherwise provided, the remainder of this act becomes effective September 1, 2006, and applies to room occupancy and tourism development taxes levied on and after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: July 10, 2006

TO: House Finance Committee

FROM: Rodney Bizzell
Fiscal Research Division

RE: PCS S1431

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2006-07	**FY 2007-08**	**FY 2008-09**	**FY 2009-10**	**FY 2010-11**
REVENUES:					
Town of Burgaw	**$6,570**	**$6,773**	**$6,929**	**$7,088**	**$7,251**
New Hanover Dist. U	**Approximately $110,000 annually. See assumptions and methodology.**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Town of Burgaw, New Hanover County, City of Wilmington

EFFECTIVE DATE: July 1, 2006

BILL SUMMARY:
Senate Bill 1431 authorizes the Town of Burgaw to levy a 3% room occupancy tax. Two-thirds of the proceeds would be used to promote travel and tourism and one-third would be used for tourism-related expenditures. This bill conforms to the guidelines supported by the North Carolina Travel and Tourism Coalition and adhered to by the House Finance Committee.

The Proposed Committee Substitute for House Bill 2684 does the following:

- Modifies the distribution of the New Hanover County and City of Wilmington occupancy tax proceeds, effective September 1, 2006.
- Creates a new taxing district consisting of the unincorporated areas of New Hanover County for the purpose of levying a 3% room occupancy and tourism development tax to be used for beach nourishment.
- Changes the dates by which Wilmington must demonstrate to the TDA that it has completed development and financing arrangements and that construction has begun on a convention center in order to retain occupancy tax proceeds remitted to it for that purpose.
- Adds an annual reporting requirement requiring that the New Hanover TDA and the City of Wilmington report to the General Assembly on the collection and distribution of occupancy tax proceeds and the progress of the convention center.

ASSUMPTIONS AND METHODOLOGY:

Town of Burgaw
Based on information from Pender County, there is one motel in the Town of Burgaw. Assuming 25 rooms, an average rate of $40 per night and a 60% occupancy rate, the 3% occupancy tax would generate approximately $6,570 annually. The general rate for the Consumer Price Index is used to determine the rate of growth in the tax collections for future years.

New Hanover County
The proposed District U revenues are calculated by subtracting occupancy tax revenues from the New Hanover County municipalities from the current 3% New Hanover County tax. The result is the revenue that would be generated from the proposed 3% tax in the unincorporated areas of the county.

The bill also changes the distributions for the city and county occupancy taxes as described in the table below:

Origin of Tax	Sept. 1, 2006–June 30, 2008	July 1, 2008 Forward
Wilmington Convention Center District 3% county + 3% city = 6% tax	40% = Convention center account 30% = Beach nourishment 30% = TDA (for promotion)	100% = Convention center account 0% = Beach nourishment 0% = TDA (for promotion)
Outside Convention Center District (but within city limits) 3% county + 3% city = 6% tax	3% county tax = • 60% beach nourishment • 40% TDA (for	3% county tax = • 60% beach nourishment • 40% TDA (for promotion)

	promotion)	
	3% city tax = • 100% convention center	3% city tax = 100% convention center
New Hanover County District U (unincorporated area of the county) 3% county + 3% district = 6% tax	3% county tax = • 60% beach nourishment • 40% TDA (for promotion)	3% county tax = • 60% beach nourishment • 40% TDA (for promotion)
	3% district tax = • 100% beach nourishment	3% district tax = 100% beach nourishment

The revenue from the New Hanover County occupancy tax generated from within the proposed convention center district would be directed to the convention center account beginning July 1, 2008. The amount of revenue that would be re-directed is approximately $250,000 annually based on projected revenues from the proposed convention center hotel.

SOURCES OF DATA:
Pender County, City of Wilmington, NC Department of Revenue.

TECHNICAL CONSIDERATIONS: None

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1431

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S1431-ASVx-30 [v.1]

Date July 13 ,2006

Comm. Sub. [YES]
Amends Title [YES]
First Edition

~~Senator~~ Rep. Faison

moves to amend the bill on page 1, line 10, by rewriting the line to read:
"WILMINGTON OCCUPANCY TAX; AND (3) TO AUTHORIZE CASWELL COUNTY AND THE TOWN OF YANCEYVILLE TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX."

and on page 13, lines 32-33, by adding two new bill sections to read:

CASWELL COUNTY OCCUPANCY TAX.

SECTION 11.1. Occupancy Tax. – (a) Authorization and Scope. – The Caswell County Board of Commissioners may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 11.1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

SECTION 11.1.(c) Distribution and Use of Tax Revenue. – Caswell County shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Caswell County Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Caswell County and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

(1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a county or to attract tourists or business travelers to the county. The term includes tourism-related capital expenditures.

SECTION 11.2. Caswell County Tourism Development Authority. – (a) Appointment and Membership. – When the Caswell County Board of Commissioners adopts a resolution levying a room occupancy tax under this part, it shall also adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the county, and at least one-half of the members must be individuals who are currently active in the promotion of travel and tourism in the county. The board of commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Caswell County shall be the ex officio finance officer of the Authority.

SECTION 11.2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this part for the purposes provided in this part. The Authority shall

promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

SECTION 11.2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Caswell County Board of Commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

YANCEYVILLE OCCUPANCY TAX.

SECTION 12.1. Occupancy Tax. – (a) Authorization and Scope. – The Yanceyville Town Council may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 12.1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 12.1.(c) Distribution and Use of Tax Revenue. – The Town of Yanceyville shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Yanceyville Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Yanceyville and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

(1) Net proceeds. – Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract

tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a town or to attract tourists or business travelers to the town. The term includes tourism-related capital expenditures.

SECTION 12.2. Yanceyville Tourism Development Authority. – (a) Appointment and Membership. – When the Yanceyville Town Council adopts a resolution levying a room occupancy tax under this part, it shall also adopt a resolution creating a town Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the town, and at least one-half of the members must be individuals who are currently active in the promotion of travel and tourism in the town. The town council shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Yanceyville shall be the ex officio finance officer of the Authority.

SECTION 12.2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this part for the purposes provided in this part. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

SECTION 12.2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Yanceyville Town Council on its receipts and expenditures for the preceding quarter and for the year in such detail as the town council may require."

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1431

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S1431-ASVx-30 [v.1]

and by renumbering the remaining section accordingly.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☐ Committee Substitute for

SB 1431 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE TOWN OF BURGAW TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

☒ With a favorable report as to the House committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1839
PROPOSED COMMITTEE SUBSTITUTE H1839-CSLA-49 [v.2]

7/13/2006 7:58:45 AM

Short Title: Expand Homestead Exemption Via Tax Credit. (Public)

Sponsors:

Referred to:

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE HOMESTEAD EXCLUSION BY PROVIDING FOR AN INCOME TAX CREDIT FOR PROPERTY TAXES PAID ON A PRIMARY RESIDENCE BY ELDERLY AND DISABLED PERSONS WHOSE TAXABLE INCOMES ARE NOT MORE THAN THIRTY THOUSAND DOLLARS AS ADJUSTED ANNUALLY, AND TO STUDY THE PROPERTY TAX HOMESTEAD EXCLUSION .

The General Assembly of North Carolina enacts:

SECTION 1. Part 2 of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-151.30. Credit for property taxes paid on a primary residence by certain low-income individuals.**

(a) Credit. – An individual who meets the eligibility requirements under subsection (b) of this section is allowed, as a credit against the tax imposed by this Part, an amount equal to fifty percent (50%) of the property taxes paid by the individual under Subchapter II of this Chapter on a permanent residence owned by the individual.

(b) Eligibility. – An individual is eligible for this credit only if the individual satisfies all of the following conditions:

(1) The individual is at least 65 years of age or totally and permanently disabled.

(2) For the 2007 taxable year, the individual has taxable income for the taxable year of not more than thirty thousand dollars ($30,000). For the 2008 and subsequent taxable years, the income eligibility limit is the amount for the preceding year, adjusted by the same percentage of this amount as the percentage of any cost-of-living adjustment made to the benefits under Titles II and XVI of the Social Security Act for the preceding calendar year, rounded to the nearest one hundred dollars ($100.00).

(3) The individual is a North Carolina resident.

(4) The individual is not eligible for the property tax homestead exclusion under G.S. 105-277.1.

(c) Definitions. – The definitions of 'permanent residence' and 'totally and permanently disabled' in G.S. 105-277.1 apply in this section.

(d) Multiple Ownership. – A married couple that owns and occupies a permanent residence as tenants by the entirety is entitled to the full benefit of this credit notwithstanding that only one of the couple meets the age or disability requirements of this section. When a permanent residence is owned and occupied by two or more persons other than husband and wife and one or more of the owners qualifies for this credit, each qualifying owner is entitled to the full amount of the credit not to exceed his or her proportionate share of the valuation of the property. No part of a credit available to one co-owner may be claimed by any other co-owner, and in no event may the total credit allowed for a permanent residence exceed the amount provided in this section.

(e) Credit Refundable. – If the credit allowed by this section exceeds the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowable, the Secretary must refund the excess to the taxpayer. In computing the amount of tax against which multiple credits are allowed, nonrefundable credits are subtracted before refundable credits."

SECTION 2. The Revenue Laws Study Committee shall study and recommend any changes to the property tax homestead exclusion. The Committee shall make a report of its findings and recommendations to the 2007 General Assembly.

SECTION 3. This act is effective for taxable years beginning on or after January 1, 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

HOUSE BILL 1839

Short Title:	Expand Homestead Exemption Via Tax Credit.	(Public)
Sponsors:	Representatives Allred, Cole, Gibson, Moore (Primary Sponsors); Blackwood, Capps, Clary, Coleman, Culp, Current, Faison, Frye, Gillespie, Goodwin, Grady, Gulley, Hill, Hilton, Kiser, McComas, McGee, Pate, Preston, Rayfield, Setzer, Sherrill, Starnes, Steen, Stiller, Underhill, Vinson, Walend, Walker, Wilson, and Womble.	
Referred to:	Finance.	

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE HOMESTEAD EXCLUSION BY PROVIDING FOR AN INCOME TAX CREDIT FOR PROPERTY TAXES PAID ON A PRIMARY RESIDENCE BY ELDERLY AND DISABLED PERSONS WHOSE TAXABLE INCOMES ARE NOT MORE THAN THIRTY THOUSAND DOLLARS AS ADJUSTED ANNUALLY.

The General Assembly of North Carolina enacts:

SECTION 1. Part 2 of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-151.30. Credit for property taxes paid on a primary residence by certain low-income individuals.**

(a) Credit. – An individual who meets the eligibility requirements under subsection (b) of this section is allowed, as a credit against the tax imposed by this Part, an amount equal to fifty percent (50%) of the property taxes paid by the individual under Subchapter II of this Chapter on a permanent residence owned by the individual.

(b) Eligibility. – An individual is eligible for this credit only if the individual satisfies all of the following conditions:

(1) The individual is at least 65 years of age or totally and permanently disabled.

(2) For the 2006 taxable year, the individual has taxable income for the taxable year of not more than thirty thousand dollars ($30,000). For the 2007 and subsequent taxable years, the income eligibility limit is the amount for the preceding year, adjusted by the same percentage of this amount as the percentage of any cost-of-living adjustment made to the benefits under Titles II and XVI of the Social Security Act for the

preceding calendar year, rounded to the nearest one hundred dollars ($100.00).

(3) The individual is a North Carolina resident.

(4) The individual is not eligible for the property tax homestead exclusion under G.S. 105-277.1.

(c) Definitions. – The definitions of 'permanent residence' and 'totally and permanently disabled' in G.S. 105-277.1 apply in this section.

(d) Multiple Ownership. – A married couple that owns and occupies a permanent residence as tenants by the entirety is entitled to the full benefit of this credit notwithstanding that only one of the couple meets the age or disability requirements of this section. When a permanent residence is owned and occupied by two or more persons other than husband and wife and one or more of the owners qualifies for this credit, each qualifying owner is entitled to the full amount of the credit not to exceed his or her proportionate share of the valuation of the property. No part of a credit available to one co-owner may be claimed by any other co-owner, and in no event may the total credit allowed for a permanent residence exceed the amount provided in this section.

(e) Credit Refundable. – If the credit allowed by this section exceeds the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowable, the Secretary must refund the excess to the taxpayer. In computing the amount of tax against which multiple credits are allowed, nonrefundable credits are subtracted before refundable credits."

SECTION 2. This act is effective for taxable years beginning on or after January 1, 2006.

HOUSE BILL 1839:
Expand Homestead Exemption Via Tax Credit

BILL ANALYSIS

Committee:	House Finance	**Date:**	July 13, 2006
Introduced by:	Reps. Allred, Cole, Gibson, Moore	**Summary by:**	Martha Walston
Version:	H1839-CSLA-49		Committee Counsel

SUMMARY: ***House Bill 1839 provides a refundable income tax credit equal to 50% of the property taxes paid on a primary residence by elderly or disabled persons whose taxable income is not more than $30,000 for tax year 2006. For subsequent tax years, the taxable income is indexed based on cost-of-living adjustments in Social Security benefits. The credit is not allowed if the taxpayer is eligible for the existing homestead exclusion.***

The proposed committee substitute to House Bill 1839 changes the effective date to the taxable year beginning on or after January 1, 2007, and directs the Revenue Laws Study Committee to study and recommend any changes to the property tax homestead exclusion.

CURRENT LAW: The homestead exclusion is a partial exclusion from property taxes for the permanent residence[1] of a person who:

(1) is either age 65 or older or totally and permanently disabled[2] and

(2) until July 1, 2003, has an income of not more than $18,000. For every year thereafter, the income eligibility amount is indexed by a percentage equal to the cost-of-living adjustment (COLA) percentage used to increase social security benefits for the preceding calendar year. The COLAs are based on increases in the Consumer Price Index for Urban Wage Earners and Clerical Workers from the third quarter of the prior year to the corresponding quarter for the current year in which the COLA is effective. The COLA for 2006 is 2.7%, and the income eligibility limit is $19,700.

The amount of the appraised value of the residence equal to the exclusion amount is excluded from taxation. The exclusion amount is the greater of $20,000 or 50% of the tax value of the home.

The income used to determine the income eligibility amount includes moneys received from every source other than gifts or inheritances received from a spouse, lineal ancestor, or lineal descendant. For married applicants residing with their spouses, the income of both spouses is included, regardless of whether the property is in both names.

BILL ANALYSIS: The proposed committee substitute for House Bill 1839 would allow an income tax credit equal to 50% of the property taxes paid by the taxpayer on the permanent residence owned by the taxpayer if the taxpayer meets the following requirements:

(1) The taxpayer is a North Carolina resident, is at least 65 or totally and permanently disabled, and is not eligible for the existing homestead exclusion.

---

[1] Permanent residence is a person's legal residence. It includes the dwelling, the dwelling site, not to exceed one acre, and related improvements. The dwelling may be a single family residence, a unit in a multi-family residential complex, or a manufactured home.

[2] Totally and permanently disabled refers to a person who has a physical or mental impairment that substantially precludes him or her from obtaining gainful employment and appears reasonably certain to continue without substantial improvement throughout his or her life.

(2) For the 2006 taxable year, the taxpayer has taxable income of not more than $30,000. For subsequent taxable years, the income eligibility limit is indexed in the same manner as the existing homestead exclusion.

Both the existing homestead exclusion and the proposed bill provide the full benefit to married couples owning and occupying the residence as tenants by the entirety, even if only one spouse meets the age or disability requirements

If the proposed income tax credit exceeds the taxpayer's income tax reduced by the sum of all other credits allowed the taxpayer, then the Secretary of Revenue must refund the excess credit to the taxpayer.

House Bill 1839 also directs the Revenue Laws Study Committee to study and recommend any changes to the property tax homestead exclusion and to report its findings and recommendations to the 2007 General Assembly

EFFECTIVE DATE: The act is effective for taxable years beginning on or after January 1, 2007.

H1839e1-SMLA

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: July 12, 2006

TO: Representatives Allred, Gibson, Cole, and Moore

FROM: Rodney Bizzell
Fiscal Research Division

RE: House Bill 1839 (Unknown Edition)

FISCAL IMPACT ($ millions)

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES:					
General Fund	$0	($28.6)	($30.5)	($32.5)	($34.7)

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Department of Revenue

EFFECTIVE DATE: Effective for taxable years beginning on or after January 1, 2007

BILL SUMMARY:
This bill provides a refundable state income tax credit equal to 50% of the property taxes paid on a primary residence by elderly and disabled persons whose taxable income is not more than $30,000. For subsequent tax years, the taxable income is indexed based on cost-of-living adjustments in Social Security benefits. The credit is not allowed if the taxpayer is eligible for the existing homestead exclusion. The proposed committee substitute to House Bill 1839 changes the effective

date from 2006 to 2007 and directs the Revenue Laws Study Committee to study and recommend any changes to the property tax homestead exclusion.

ASSUMPTIONS AND METHODOLOGY:
The current homestead exclusion applies to persons age 65 or older or totally and permanently disabled with income of $19,700 or less for 2006. Thus, this bill would affect elderly and disabled persons with incomes between $19,700 and $30,000. The income eligibility limits for both this bill and the existing homestead exclusion would increase each year based on the COLA for Social Security payments. It is assumed that the number of disabled persons affected by this bill would be minimal.

According to the 2004 American Community Survey (ACS), there were 96,017 households with occupants age 65 or older that fell within the $20,000 to $30,000 income range. It is estimated that 61% of persons in this income range own their own home. Based on this percentage, the total number of persons affected by this bill is estimated to be 58,570.

The next step in the analysis is to calculate an average property value. According to the US Census Bureau, the median home value for the 65 and older population in North Carolina is $107,143. Because tax revenue is based on the assessed value of property rather than the market value, this figure is adjusted by the average statewide sales assessment ratio, which is 86%. Thus, the average assessed value is $92,020. Because the tax credit applies to 50% of the property value, the amount of the exclusion per property owner is estimated to be $46,010. Applying the average weighted tax rate for state counties and municipalities and multiplying by the number of property owners results in the total annual revenue loss.

Growth for future years is based on the change in the number of eligible taxpayers and the increase in property values. The increase in eligible taxpayers is estimated by calculating the average increase in the 65 and older population in North Carolina for the four-year period from 2000 to 2004, which is 1.5 % annually. Property values are assumed to increase by 5% each year.

The bill indexes the income eligibility limit by the amount of the annual Social Security COLA. It is assumed that the increased cost in subsequent years resulting from higher income eligibility would be off-set by other taxpayers becoming eligible for the existing homestead exclusion.

SOURCES OF DATA: North Carolina Department of Revenue; U.S. Bureau of the Census

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 4

SENATE BILL 881

Commerce Committee Substitute Adopted 6/29/05
Finance Committee Substitute Adopted 8/9/05
House Committee Substitute Favorable 6/26/06

Short Title: Lapse in Liability Insurance. (Public)

Sponsors:

Referred to:

March 23, 2005

A BILL TO BE ENTITLED

AN ACT TO REVISE THE PENALTIES FOR OPERATING A MOTOR VEHICLE WITHOUT HAVING IN FULL FORCE AND EFFECT A LIABILITY INSURANCE POLICY PROVIDING FINANCIAL RESPONSIBILITY.

The General Assembly of North Carolina enacts:

SECTION 1. Article 13 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-309.2. Insurer shall notify Division of actions on insurance policies.**

(a) Notice Required. – An insurer shall notify the Division upon any of the following with regard to a motor vehicle liability policy:

(1) Issues a new or replacement policy.

(2) Terminates a policy, either by cancellation or failure to renew, unless the same insurer issues a replacement policy complying with this Article at the same time the insurer terminates the old policy and no lapse in coverage results.

(3) Reinstates a policy after the insurer has notified the Division of a cancellation or termination.

(b) Time Period. – An insurer shall notify the Division as required by subsection (a) of this section within 20 business days.

(c) Form of Notice. – Any insurer with twenty-five million dollars ($25,000,000) or more in annual vehicle insurance premium volume shall submit the notices required under this section by electronic means. All other insurers may submit the notices required under this section by either paper or electronic means.

(d) Trade Secret Protection. – The names of insureds and the beginning date and termination date of insurance coverage provided to the Division by an insurer under this section constitutes a designated trade secret under G.S. 132-1.2.

(e) Civil Penalty. – The Commissioner of Insurance may assess a civil penalty of two hundred dollars ($200.00) against an insurer that fails to notify the Division as required by this section. The Commissioner may waive the penalty if the insurer establishes good cause for the failure."

SECTION 2. G.S. 20-311 reads as rewritten:

"**§ 20-311. ~~Revocation of registration when financial responsibility not in effect.~~Action by the Division when notified of a lapse in financial responsibility.**

~~Upon receipt of evidence that financial responsibility for the operation of any motor vehicle registered or required to be registered in this State is not or was not in effect at the time of operation or certification that insurance was in effect, the Division shall revoke the owner's registration plate issued for the vehicle at the time of operation or certification that insurance was in effect or the current registration plate for the vehicle in the year registration has changed for 30 days.~~

~~The vehicle for which registration has been revoked pursuant to this section may be registered at the end of the 30-day revocation period upon certification of financial responsibility and payment by the vehicle owner of a fifty-dollar ($50.00) administrative fee in addition to appropriate license fees. In no event may such vehicle be registered prior to payment of the fifty dollar ($50.00) administrative fee.~~

(a) Action. – When the Division receives evidence, by a notice of termination of a motor vehicle liability policy or otherwise, that the owner of a motor vehicle registered or required to be registered in this State does not have financial responsibility for the operation of the vehicle, the Division shall send the owner a letter. The letter shall notify the owner of the evidence and inform the owner that the owner shall respond to the letter within 10 days of the date on the letter and explain how the owner has met the duty to have continuous financial responsibility for the vehicle. Based on the owner's response, the Division shall take the appropriate action listed:

(1) Division correction. – If the owner responds within the required time and the response establishes that the owner has not had a lapse in financial responsibility, the Division shall correct its records.

(2) Penalty only. – If the owner responds within the required time and the response establishes all of the following, the Division shall assess the owner a penalty in the amount set in subsection (b) of this section:

a. The owner had a lapse in financial responsibility, but the owner now has financial responsibility.

b. The vehicle was not involved in an accident during the lapse in financial responsibility.

c. The owner did not operate the vehicle during the lapse with knowledge that the owner had no financial responsibility for the vehicle.

(3) Penalty and revocation. – If the owner responds within the required time and the response establishes any of the following, the Division shall assess the owner a penalty in the amount set in subsection (b) of

this section and revoke the registration of the owner's vehicle for the period set in subsection (c) of this section:

a. The owner had a lapse in financial responsibility and still does not have financial responsibility.

b. The owner now has financial responsibility even though the owner had a lapse, but the vehicle was involved in an accident during the lapse, the owner operated the vehicle during the lapse with knowledge that the owner had no financial responsibility for the vehicle, or both.

(4) Revocation pending response. – If the owner does not respond within the required time, the Division shall revoke the registration of the owner's vehicle for the period set in subsection (c) of this section. When the owner responds, the Division shall take the appropriate action listed in subdivisions (1) through (3) of this subsection as if the response had been timely.

(b) Penalty Amount. – The following table determines the amount of a penalty payable under this section by an owner who has had a lapse in financial responsibility; the amount is based on the number of times the owner has been assessed a penalty under this section during the three-year period before the date the owner's current lapse began:

Number of Lapses in Previous Three Years	Penalty Amount
None	$75.00
One	$150.00
Two or More	$250.00

(c) Revocation Period. – The revocation period for a revocation based on a response that establishes that a vehicle owner does not have financial responsibility is indefinite and ends when the owner obtains financial responsibility or transfers the vehicle to an owner who has financial responsibility. The revocation period for a revocation based on a response that establishes the occurrence of an accident during a lapse in financial responsibility or the knowing operation of a vehicle without financial responsibility is 30 days. The revocation period for a revocation based on failure of a vehicle owner to respond is indefinite and ends when the owner responds.

(d) Revocation Notice. – When the Division revokes the registration of an owner's vehicle, it shall notify the owner of the revocation. The notice shall inform the owner of the following:

(1) That the owner shall return the vehicle's registration plate and registration card to the Division, if the owner has not done so already, and that failure to do so is a Class 2 misdemeanor under G.S. 20-45.

(2) That the vehicle's registration plate and registration card are subject to seizure by a law enforcement officer.

(3) That the registration of the vehicle cannot be renewed while the registration is revoked.

(4) That the owner shall pay any penalties assessed, a restoration fee, and the fee for a registration plate when the owner applies to the Division to register a vehicle whose registration was revoked.

(e) Registration After Revocation. – A vehicle whose registration has been revoked may not be registered during the revocation period in the name of the owner, a child of the owner, the owner's spouse, or a child of the owner's spouse. This restriction does not apply to a spouse who is living separate and apart from the owner. At the end of a revocation period, a vehicle owner who has financial responsibility may apply to register a vehicle whose registration was revoked. The owner shall pay any penalty assessed, a restoration fee of fifty dollars ($50.00), and the fee for a registration plate."

SECTION 3. G.S. 20-316 reads as rewritten:

"**§ 20-316. Divisional hearings upon lapse of liability insurance coverage.**

Any person whose registration plate has been revoked under G.S. ~~20-309(e) or~~ 20-311 may request a hearing. Upon receipt of such request, the Division shall, as early as practical, afford ~~him~~ an opportunity for hearing. ~~Upon such~~ At the hearing the duly authorized agents of the Division may administer oaths and issue subpoenas for the attendance of witnesses and the production of relevant books and documents. If it appears that continuous financial responsibility existed for the vehicle involved, or if it appears the lapse of financial responsibility is not reasonably attributable to the neglect or fault of the person whose registration plate was revoked, the Division shall withdraw its order of revocation and such person may retain the registration plate. Otherwise, the order of revocation shall be affirmed and the registration plate surrendered."

SECTION 4. G.S. 20-63(h) reads as rewritten:

"(h) Commission Contracts for Issuance of Plates and Certificates. – All registration plates, registration certificates, and certificates of title issued by the Division, outside of those issued from the Raleigh offices of the Division and those issued and handled through the United States mail, shall be issued insofar as practicable and possible through commission contracts entered into by the Division for the issuance of the plates and certificates in localities throughout North Carolina with persons, firms, corporations or governmental subdivisions of the State of North Carolina. The Division shall make a reasonable effort in every locality, except as noted above, to enter into a commission contract for the issuance of the plates and certificates and a record of these efforts shall be maintained in the Division. In the event the Division is unsuccessful in making commission contracts, it shall issue the plates and certificates through the regular employees of the Division. Whenever registration plates, registration certificates, and certificates of title are issued by the Division through commission contract arrangements, the Division shall provide proper supervision of the distribution. Nothing contained in this subsection will allow or permit the operation of fewer outlets in any county in this State than are now being operated.

Commission contracts entered into by the Division under this subsection shall provide for the payment of compensation on a per transaction basis. The collection of the highway use tax shall be considered a separate transaction for which one dollar and twenty-seven cents ($1.27) compensation shall be paid. The performance at the same time of one or more of the remaining transactions listed in this subsection shall be

considered a single transaction for which one dollar and forty-three cents ($1.43) compensation shall be paid.

A transaction is any of the following activities:

...

(7) Receipt of the civil penalty imposed by ~~G.S. 20-309~~ G.S. 20-311 for a lapse in financial responsibility or receipt of the restoration fee imposed by that statute.

..."

SECTION 5. The following statutes are repealed: G.S. 20-309(e), G.S. 20-312, and G.S. 20-316.1.

SECTION 6. This act becomes effective January 1, 2008, and applies to lapses occurring on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 881

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S881-ALA-36 [v.5]

Date _____,2006

Comm. Sub. [NO]
Amends Title [YES]
Fourth Edition

Representative Alexander

moves to amend the bill on page 1, line 4, by rewriting the line to read:
"INSURANCE POLICY PROVIDING FINANCIAL RESPONSIBILITY, AND TO SET OUT THE TIME LIMIT FOR AN INSURER TO REQUEST A REFUND FOR OVERPAYMENTS TO A HEALTH CARE PROVIDER OR HEALTH CARE FACILITY.";
And on page 5, lines 11 and 12, by rewriting those lines to read:
"**SECTION 6.** G.S. 58-3-225(h) reads as rewritten:
'(h) To the extent permitted by the contract between the insurer and the health care provider or health care facility, the insurer may recover overpayments made to the health care provider or health care facility by making demands for refunds and by offsetting future payments. Any such recoveries may also include related interest payments that were made under the requirements of this section. ~~Recoveries by the insurer must be accompanied by the specific reason and adequate information to identify the specific claim.~~ An insurer must provide health care providers or health care facilities with reasonable written notice of a patient's name, service date, payment amount, specific reason, and other adequate information to identify a specific claim at least 45 calendar days before seeking an overpayment recovery adjustment or offsetting future payments. Specific reasons for the proposed adjustment include coordination of benefits, lack of eligibility or lack of coverage for the services. No insurer may initiate overpayment recovery adjustments or offsetting of future payments more than 180 days after the date of the original claim payment, unless there is documented evidence of fraud by the health care provider or health care facility. No insurer may extend the time to recover overpayments to a period of more than 180 days in the contract between the insurer and the health care provider or health care facility, unless there is documented evidence of fraud. To the extent permitted by the contract between the insurer and the

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 881

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S881-ALA-36 [v.5]

health care provider or health care facility, the health care provider or health care facility may recover underpayments or nonpayments by the insurer by making demands for refunds. Any such recoveries by the health care provider or health care facility of underpayments or nonpayment by the insurer may include applicable interest under this section. ~~The period for which such recoveries may be made may be specified in the contract between the insurer and health care provider or health care facility.~~'

SECTION 7. Sections 1 through 5 of this act become effective January 1, 2008, and apply to lapses occurring on or after that date. Section 6 of this act is effective when it becomes law, and applies to contracts entered into on or after that date."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 881

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S881-ALA-38 [v.1]

Date _____,2006

Comm. Sub. [NO]
Amends Title [NO]
Fourth Edition

Representative Wainwright

moves to amend the bill on page 3, lines 22 through 24, by rewriting those lines to read:

"None	$50.00
One	$100.00
Two or More	$150.00"

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

SENATE BILL 881:
Lapse in Liability Insurance

BILL ANALYSIS

Committee:	House Finance	**Date:**	July 11, 2006
Introduced by:	Sen. Garrou	**Summary by:**	Martha Walston
Version:	Fourth Edition		Committee Counsel

SUMMARY: Senate Bill 881 would revise the penalties for individuals operating motor vehicles when their liability insurance policies have lapsed, and makes the time period within which an insurer must notify DMV of certain changes in the status of a liability policy consistent (20 days) regardless of the type of change.

The bill would be effective January 1, 2008, and would apply to lapses occurring on or after that date.

SB 881 has passed out of Senate Commerce, Senate Finance, and House Insurance.

CURRENT LAW: All vehicles intended to be operated on North Carolina highways must be registered with the DMV, and all registered vehicles are required to carry continuous liability insurance coverage. The purpose of this law is to provide protection to persons who may be injured or damaged by the negligent operation of a motor vehicle. Without financial responsibility, an owner loses the privilege to drive on North Carolina roads and must therefore surrender his registration plate and card.

G.S. 20-309(e) requires an insurer to notify DMV when it terminates a liability insurance policy and a lapse in coverage results (failure to do so is punishable by a civil penalty of $200 to be assessed by the Commissioner of Insurance). Upon receiving this notice, the DMV notifies the owner of the vehicle of the lapse, and the owner must respond within 10 days certifying to the DMV either:

- That the owner had financial responsibility effective on or before termination; or
- In case of a lapse, that the owner now has financial responsibility, the owner did not operate the vehicle during the lapse knowing that there was a lapse, and the vehicle was not involved in an accident during the lapse. The owner must also pay a $50 civil penalty for the lapse.

If the owner fails to certify that he has financial responsibility as described above, then the DMV is required to revoke the vehicle's registration for 30 days. The owner is required to surrender the registration plate and card to DMV upon revocation, and failure to do so is a Class 1 misdemeanor. After the 30 days, the owner may reregister the vehicle upon payment of a restoration fee of $50 and the appropriate fee for a new registration plate.

BILL ANALYSIS:

Section 1 – Insurer must notify DMV of actions on insurance policies.

Section 1 of the bill would rewrite and clarify the notice provisions formerly contained in G.S. 20-309(e) and G.S. 20-316.1 and place them in a new statutory section – G.S. 20-309.2. Current law requires insurers to notify DMV within 20 days upon termination, cancellation, or issuance of a new automobile liability insurance policy. The notice must be sent electronically if the insurer has $25 million or more in annual vehicle insurance premium volume.

The current law is somewhat unclear, however, with regard to notice of replacement policies. G.S. 20-309(e) states that an insurer must notify DMV of the issuance of a replacement policy, where no lapse in coverage occurred, by sending a certificate of insurance form. The statute goes on to state that an insurer must notify DMV of a new policy within 20 days unless the new coverage is a replacement

policy for a policy terminated by the same insurer, which would seem to suggest that either no notice is required for a replacement policy or that the notice need not be sent within 20 days. Current industry practice suggests that the "certificate of insurance" forms for replacement policies are usually sent within 20 days.

Section 1 of the bill would clarify the notice requirement by setting out the circumstances under which an insurer must notify DMV as follows:

1) Issuance of a new or replacement policy.
2) Termination of a policy, either by cancellation or failure to renew, that results in a lapse of coverage.
3) Renewal or reinstatement of a policy after the insurer has notified DMV of a cancellation or termination.

The only instance under which an insurance company is not required to notify DMV is when a policy is simply renewed (where there is no lapse in coverage).

The remainder of Section 1 incorporates the same substantive provisions that currently exist regarding notice, such as the time period, the form of notice, the trade secret protection provision for insured names, and the civil penalty assessed against insurers for violations.

Section 2 – Action by DMV upon notification of lapse.

Section 2 of the bill places in G.S. 20-311, the remaining provisions from G.S. 20-309(e) regarding action required by DMV upon notification by an insurer of a lapse in coverage and makes the following substantive changes to current law:

- It specifically requires DMV to notify the owner by letter of the lapse in coverage and requires the owner to respond within 10 days[1] explaining how the owner has met the duty to have continuous financial responsibility on the vehicle.
- It would increase, as well as create an increasing scale of, monetary penalties for not maintaining financial responsibility based on the number of lapses an owner has had in the previous 3 years. For the first lapse, the penalty would be $75, a second would be $150, and a third or subsequent lapse would be $250 (currently $50, regardless of number of lapses).[2]
- It would maintain the restoration fee (currently called administrative fee) to reregister the vehicle after a revocation at $50.
- It would require an owner to pay both the applicable civil penalty as well as the restoration fee upon reregistration. Under current law, an owner pays only the $50 restoration fee upon reregistration, but no civil penalty.
- It would make failure to surrender a registration plate and card to DMV after it has been revoked a Class 2 misdemeanor (currently Class 1 misdemeanor).

Sections 3, 4, and 5 – Conforming changes.

Sections 3, 4, and 5 make conforming changes to other statutes as the result of the repeal of G.S. 20-309(e), 20-312, and 20-316.1. and the reorganization of its provisions.

Trina Griffin and Brad Krehely substantially contributed to this summary.

S0881e4-SMLA

[1] The time period is the same under current law.

[2] In July 2005, the NC Supreme Court held in *North Carolina School Boards Assn. v. Moore* that these penalties, as well as the $200 penalty levied against an insurer that fails to provide the required notice, are required to be remitted to local school boards under Section 7 of Article IX of the NC Constitution. The court did not, however, address the restoration fee.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: Senate Bill 881 (Third Edition)

SHORT TITLE: Lapse in Liability Insurance.

SPONSOR(S):

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2005-06	**FY 2006-07**	**FY 2007-08**	**FY 2008-09**	**FY 2009-10**
REVENUES:					
Schools (Penalties)		**$2,500,000**	**$5,000,000**	**$5,000,000**	**$5,000,000**
EXPENDITURES:					
Highway Fund DMV IT	**$168,156**	**$434,700**			
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Division of Motor Vehicles (DMV)

EFFECTIVE DATE: January 1, 2007

BILL SUMMARY: Sections 1-3 of the Bill reorganize and rewrite the statutes governing financial responsibility for individuals operating motor vehicles and revise the penalties for noncompliance. The bill would increase monetary penalties (paid to local school boards) for not maintaining financial responsibility based on the number of lapses an owner has had in the previous three years.

ASSUMPTIONS AND METHODOLOGY: The bill would have significant fiscal impacts in two areas:

1. **Increases in civil penalties to local school districts.**
   Estimated impact: Increase of $5 million per year.
   Under current law an owner whose insurance lapses is subject to a civil penalty of $50 to retain the registration plate. Revenues from this penalty totaled about $10 million in fiscal year 2004-05. These revenues have accrued to the Highway Fund in the past but as a result of the recent NC Supreme Court ruling in *North Carolina School Boards Association v. Moore* penalties now go to the local school boards. This bill increases the penalties from $50 to $75

for the first lapse, $150 for the second lapse within three years, and $250 for subsequent lapses. A very rough estimate is that the 50% increase for the first lapse would yield a 50% increase in civil penalties, or $5 million per year.

2. **Costs to Highway Fund for DMV computer changes.**
   Estimated impact: $602,856
   DMV estimates that to carry out the provisions of the bill would require changes to three of its computer systems at a total cost of $602,856.

LITES (Liability Insurance Tracking and Enforcement System)
This system will require major changes at a high technical level of effort. DMV estimates 3,000 hours of IT effort and notes that the developers who would be involved are highly specialized and are billed out at $150 per hour, rather than the customary $80 per hour charge for IT contractors on other DMV systems. (Additional detail on the DMV IT requirements are included in Technical Considerations, below.) The total cost for the LITES changes is $450,000 for programming plus $27,000 for state IT overhead, for a total of $477,000. **DMV indicates that these would be major changes to a system that is unstable and suggests consideration be given to rewriting the entire LITES program. The current DMV estimate for a full rewrite is $20 million.**

STARS (State Titling and Registration System)
Changes to STARS will require 1,000 hours at $80 per hour, or $80,000, plus state IT overhead of $7,200 for a total of $87,200.

SADLS (State Automated Driver License System)
Changes to SADLS will be required for an additional interface with STARS and LITES. These changes will require 443 hours at $80 per hour, or $35,440, plus state IT overhead of $3,216, for a total of $38,656.

SOURCES OF DATA: Division of Motor Vehicles

TECHNICAL CONSIDERATIONS:

Additional Detail from DMV on IT Requirements

STARS AND LITES
LITES (Liability Insurance Tracking and Enforcement System) and STARS (State Titling And Registration System) will require modifications to implement the Bill. The following major changes will be required:
- *Modification of the STARS application to remove the maximum 30-day unlicensed period for non-accident Revocations because the unlicensed period can be indefinite.*
- *Modification of the LITES application to generate Revocation letters without the 30-day period for non-accident Revocations, and including statements concerning penalties and registration renewal.*
- *Modification of the LITES application to generate Revocation letters with the 30-day period for lapses involving accidents, and including statements concerning penalties and registration renewal.*
- *Modification of FR3 (Self-Certification) processing in the LITES mainframe and Internet applications, and STARS application, to compute the different penalty amounts based on number of lapses.*
- *Modification of FR3 processing in the LITES mainframe and Internet applications, and the STARS application, to allow owners to enter FR-3s on lapses that have reached Revocation.*

- *Modification of the FS5/7 (Insurance Lapse Notification) process in the LITES mainframe system to send customers FS5/7 letters stating the correct penalty.*
- *Modification of the STARS application to handle LITES penalty collection correctly.*
- *Modification of the STARS title transfer process to close the lapse when the vehicle is transferred to a family member with valid insurance.*
- *Modification of the STARS fee calculation process for the new fee structure.*
- *Modification of the LITES Hearing Decision process to display civil penalty decision correctly.*
- *Modification of the LITES mainframe system to allow only Accident Prima Facie lapses to be created. False Certification, False Self-Certification (false FR-3), and Self-certification Random Sampling Prima Facie lapses will be discontinued.*

***Technical Level of Effort** – High*

Detailed Cost Justifications for LITES:

Activity	***Estimated Hours***		
Analysis	*300*		
Design	*300*		
Programming/Testing	*1300*		
System Testing	*300*		
Client Testing	*500*		
Implementation	*150*		
Post Implementation	*150*		
Total	*3000*	*x $150/hr =*	*$450,000*

SIPS Charges = (15% of Programming & testing & implementation hours) x $80 = .15 x 2250 hrs x 80 hour =$27,000
Bill rate for LITES is based on contracting Sapiens developers.
Total Estimate (including Programming & SIPS Charges) = $477,000

Detailed Cost Justifications for STARS:

Activity	***Estimated Hours***		
Analysis	*150*		
Design	*100*		
Programming/Testing	*300*		
System Testing	*50*		
Client Testing	*200*		
Implementation	*50*		
Post Implementation	*150*		
Total	*1000*	*x $80/hr =*	*$80,000*

ITS Charges = (15% of Programming & testing & implementation hours) x $80 = .15 x 600 hrs x 80 hour =$7,200
Total Estimate (including Programming & ITS Charges) = $87,200

SADLS
Interface necessary with STARS and LITES to obtain proper information to reflect on MVR application

Technical Level of Effort – Medium

Activity	*Estimated Hours*
HLR / Analysis	*60*
RDD / SOW	*40*
Design / Spec	*75*
Programming / Unit	*120*
System test	*40*
Regression test	*20*
Client test	*60*
Implementation	*8*
Post implementation	*20*
	===
	*443 hrs * 80/hr = $ 35,440*

*ITS Charges = (15% of Programming & testing & implementation hours) * $80 = .15 * 268 * $80 = $3,216*

Total Estimate (including Programming & ITS charges) = $ 38,656

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Bob Weiss

APPROVED BY: James D. Johnson, Director
Fiscal Research Division

Official
Fiscal Research Division
Publication

DATE: August 10, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 881

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S881-ALA-38 [v.1]

Date July 13 ,2006

Comm. Sub. [NO]
Amends Title [NO]
Fourth Edition

Representative Wainwright

moves to amend the bill on page 3, lines 22 through 24, by rewriting those lines to read:

"None	$50.00
One	$100.00
Two or More	$150.00"

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 881

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S881-ALA-36 [v.5]

Date July 13 ,2006

Comm. Sub. [NO]
Amends Title [YES]
Fourth Edition

Representative Alexander

moves to amend the bill on page 1, line 4, by rewriting the line to read:
"INSURANCE POLICY PROVIDING FINANCIAL RESPONSIBILITY, AND TO SET OUT THE TIME LIMIT FOR AN INSURER TO REQUEST A REFUND FOR OVERPAYMENTS TO A HEALTH CARE PROVIDER OR HEALTH CARE FACILITY.";
And on page 5, lines 11 and 12, by rewriting those lines to read:
"**SECTION 6.** G.S. 58-3-225(h) reads as rewritten:
'(h) To the extent permitted by the contract between the insurer and the health care provider or health care facility, the insurer may recover overpayments made to the health care provider or health care facility by making demands for refunds and by offsetting future payments. Any such recoveries may also include related interest payments that were made under the requirements of this section. ~~Recoveries by the insurer must be accompanied by the specific reason and adequate information to identify the specific claim.~~ An insurer must provide health care providers or health care facilities with reasonable written notice of a patient's name, service date, payment amount, specific reason, and other adequate information to identify a specific claim at least 45 calendar days before seeking an overpayment recovery adjustment or offsetting future payments. Specific reasons for the proposed adjustment include coordination of benefits, lack of eligibility or lack of coverage for the services. No insurer may initiate overpayment recovery adjustments or offsetting of future payments more than 180 days after the date of the original claim payment, unless there is documented evidence of fraud by the health care provider or health care facility. No insurer may extend the time to recover overpayments to a period of more than 180 days in the contract between the insurer and the health care provider or health care facility, unless there is documented evidence of fraud. To the extent permitted by the contract between the insurer and the

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 881

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S881-ALA-36 [v.5]

health care provider or health care facility, the health care provider or health care facility may recover underpayments or nonpayments by the insurer by making demands for refunds. Any such recoveries by the health care provider or health care facility of underpayments or nonpayment by the insurer may include applicable interest under this section. ~~The period for which such recoveries may be made may be specified in the contract between the insurer and health care provider or health care facility.~~'

SECTION 7. Sections 1 through 5 of this act become effective January 1, 2008, and apply to lapses occurring on or after that date. Section 6 of this act is effective when it becomes law, and applies to contracts entered into on or after that date."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Withdrawn

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒ House Committee Substitute for

SB 881 A BILL TO BE ENTITLED AN ACT TO REVISE THE PENALTIES FOR OPERATING A MOTOR VEHICLE WITHOUT HAVING IN FULL FORCE AND EFFECT A LIABILITY INSURANCE POLICY PROVIDING FINANCIAL RESPONSIBILITY.

☒ With a favorable report as to House committee substitute bill 2, unfavorable as to House committee substitute bill 1.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

North Carolina General Assembly

House Committee on Finance

Minutes

~

July 18, 2006

The House Committee on Finance met on Tuesday, July 18, 2006 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Alexander, Gibson, Luebke, and Wainwright; Vice-Chairs Daughtridge, Hill, Ross, Weiss, and Womble; and Representatives B. Allen, Blackwood, Capps, Carney, Faison, Folwell, Glazier, Hackney, Harrell, Holliman, Insko, Lewis, Lucas, McGee, Rayfield, Underhill, Walend, and Wiley. Ex-Officio member Representative Cunningham as well as Sergeant-at-Arms, Will Heath, Fred Hines, Jerald Perry, and Dusty Rhodes were also present. Staff persons present included Cindy Avrette, Rodney Bizzell, David Crotts, Brenna Erford, Canaan Huie, Martha Walston, and Bob Weiss. The Agenda and Visitor Registration Sheets are attached and incorporated into these minutes as **attachments 1 and 2.**

Chairman Wainwright called the meeting to order at 8:33 am and recognized the six (6) pages present: (1) Chris Paige of Forsyth County, sponsored by Representative Parmon; (2) Callie Ruffin of Edgecombe County, sponsored by Representative Tolson; (3) Rachael Creech of Wake County, sponsored by Speaker Black; (4) Christi Champion of Guilford County, sponsored by Speaker Black; (5) Cassie Edwards of Pitt County, sponsored by Representative Warren; and (6) Brittany Wade of Northampton County, sponsored by Speaker Black.

The first bill under the Committee's consideration was **HB 1025 – VARIOUS ABC LAW CHANGES** (see **attachment 3**). Representative Luebke was first recognized and explained that this bill was in the House Finance Committee for a concurrence recommendation. He stated further that the original bill passed by the House created a new "Winemaking on Premises Permit" and the Senate added various other provisions relating to the sale of alcohol. Representative Luebke said that he is not comfortable with concurring with the Senate on this bill without more discussion on the other provisions added by the Senate. He then moved for a recommendation that the House do not concur with the Senate changes to House Bill 1025 and that conferees be requested. Seeing no further discussion, Chairman Wainwright called the motion to a vote and it carried without objection.

The next bill considered by the Committee was **HB 1522 – FILM INCENTIVE CHANGES** (see **attachment 4**). Representative Gibson was recognized and first said that this bill was sent to the Finance Committee for a concurrence recommendation. He then stated that this bill eliminates the prohibition against claiming both a deduction and a credit for the same qualifying expenses with regard to the film incentives tax credit. He also said that the House preferred a 12% tax credit with the elimination of the double-claim prohibition. He urged the Committee to not concur and request conferees in order for the House and Senate differences to be resolved.

Chairman Wainwright then recognized Senator Boseman who stated that the tax credit was set to the 15% level that the leadership at the General Assembly promised the movie industry last year. Representative Wiley asked if there were movie production companies currently looking at North Carolina that are expecting the 15% tax credit. Sandy Sands of NBC/Universal was recognized and stated that a number of different companies in the movie industry are expecting the General Assembly to provide the tax credit at the 15% level. Representative Hackney was then recognized and asked if there was a fiscal note for the bill. Chairman Wainwright then temporarily displaced the bill while a fiscal note was located and distributed to members.

Chairman McComas then recognized Representative Daughtridge to explain **HB 2744 – ECONOMIC DEVELOPMENT PROGRAM MODIFICATIONS** (see **attachment 5**). He reported to the Committee that the Senate passed House Bill 2744 and was sending an amendment adopted on the Senate floor over to the House for concurrence. He stated that the amendment makes several technical changes to the internet data center facilities sales tax exemption that was enacted as part of the 2006 Appropriations Act. Chairman Wainwright then temporarily displaced the bill as a request was made for a copy of the floor amendment adopted by the Senate on the bill.

The following bill under discussion was **HB 1267 – EXCLUDE PENSIONS FROM INCOME TAX** (see **attachment 6**). Chairman Wainwright announced that this bill was being considered for discussion purposes only. He then recognized Representative Underhill who explained that currently retirees vested after 1989 are only allowed to exclude up to $4,000 from taxable income received from a North Carolina, other state government, or federal retirement plan. She then stated that this bill would allow all retirees, regardless of the date of vesting, to receive a full income tax exemption on pensions from State, local, and federal retirees. Under the bill, retirees receiving pensions from other state governments would also receive tax exemptions up to the extent that their home state would exempt North Carolina government pension income, however, this amount cannot be less than $4,000 as provided by current law. Following the explanation, Representative Faison was recognized and expressed his support for the bill and stated that many retirees on fixed income are in great need for tax relief. Chairman Wainwright then recognized Vern Pike of the Military Officers Association of America (MOAA) who spoke in support of the bill and explained how this bill would keep retirees in North Carolina and not encourage them to move elsewhere. Representative Ross was then recognized and asked if a proposal would be formulated next session that had less impact on the state budget. In response, Representative Underhill was recognized and stated that she would be spending more time next year trying to work out a compromise.

Copies of the Senate floor amendment having been distributed, Chairman Wainwright then replaced **HB 2744 – ECONOMIC DEVELOPMENT PROGRAM MODIFICATIONS** (see **attachment 5**) before the Committee. Representative Hackney was then recognized and asked if the amendment offered on the Senate floor had a fiscal impact on the State budget. Chairman Wainwright recognized Canaan Huie of the Bill Drafting Division who stated that the amendment did not have a fiscal impact. Representative Daughtridge was then recognized and moved that the Committee recommend that the House do concur with the Senate changes to House Bill 2744. As there was no further debate, Chairman Wainwright called the motion to a vote and it carried by consent.

Once the fiscal note was distributed to the Committee, Chairman Wainwright then replaced **HB 1522 – FILM INCENTIVE CHANGES** (see **attachment 4**) on the calendar for the Committee's consideration. Representative Gibson was then recognized and again moved that the Committee recommend that the House do not concur and request conferees on House Bill 1522.

Senator Boseman was then recognized and stated that Representative McComas, a primary sponsor on the bill, wanted the Committee to recommend that the House do concur on the bill. Seeing no further discussion, Chairman Wainwright called the motion to a vote and it carried without objection.

The following bill considered by the Committee was **HB 2008 – REENACT LONG-TERM CARE INSURANCE TAX CREDIT** (see **attachment 7**). Chairman Wainwright first announced that this bill would be considered for discussion only and recognized Representative Luebke to explain the bill. Representative Luebke stated that the bill would reinstate the long-term care insurance tax credit that expired in 2004. Following the explanation, Chairman Wainwright recognized Richard Hatch of the AARP who requested that the Chairman distribute a handout giving an overview of the AARP's position (see **attachment 8**) on this bill. He explained that this bill had received a great deal of support from the citizens of North Carolina and urged the Committee to support the bill. He also stated that he believes that the amount that North Carolina spends on long-term care under Medicaid could be reduced as residents would be given an incentive to purchase private long-term care policies. Polly Williams of the NC Coalition on Aging was then recognized and affirmed Mr. Hatch's comments as she spoke in support of the bill. Chairman Wainwright then stated that the House Finance Committee supported the bill but a further discussion needed to be made during the long session next year so the budget details created by providing the credit could be resolved. The discussion on House Bill 2008 was concluded with Vickie Young of the Department of Insurance being recognized and urging the Committee to support a long-term care insurance tax credit, if one is introduced next session.

The final bill under the Committee's consideration was **HB 1778 – RISK-BASED ENVIRONMENTAL REMEDIATION/FUND** (see **attachment 9**). Representative Gibson was first recognized to explain the bill. He stated that this bill would establish a program to authorize the Department of Environment and Natural Resources to approve the cleanup of contaminated property based on site-specific, risk-based standards. He reported that the policy part of the bill had been settled but the controversy has surrounded the fee portion of the bill. Representative Faison was then recognized and stated that this bill only requires that the ground water being cleaned up in the bill is cleaned up only to a certain standard relative to the use of the land. He stated that contaminated land should be cleaned up to given standard, regardless the use of the land. Representative Insko was then recognized and said that the $3,000 fee would be applied for up to 25 acres with a maximum fee of $75,000. She then explained the importance of clean water for North Carolina.

Chairman Wainwright then recognized Molly Diggins of the NC Sierra Club who stated that companies should have to provide compensation if they do not wish to clean up a contaminated site. Franklin Freeman from the Governor's office was recognized and urged the Committee to give this bill additional time to allow a consensus to be reached. Preston Howard of the NC Manufacturing and Chemistry Council was recognized and spoke in support of the bill and stated that the Department of Environment and Natural Resources had not come back to them with evidence that the $3,000 fee provided in the bill was not sufficient. Chairman Wainwright then recognized Representative Hackney who urged the Committee to support a bill that would require entities to properly clean up contaminated sites. Representative Womble was then recognized and stated that the bill was not ready to be approved with many of the affected parties opposing the bill. Representative Weiss stated that the bill was not a compromise as many of the interested parties are not in support of the bill. She then urged Committee members to oppose the bill in its current form. In response, Representative Gibson was recognized and stated that the parties had been at the table for over five years and doing nothing this session would be doing harm to North Carolina.

As the time allotted for the Committee meeting was approaching an end, Chairman Wainwright adjourned the meeting at 9:50 am.

Respectfully submitted,

Representative William Wainwright
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:

1. Agenda
2. Visitor Registration Sheets
3. House Bill 1025 (and related materials)
4. House Bill 1522 (and related materials)
5. House Bill 2744 (and related materials)
6. House Bill 1267 (and related materials)
7. House Bill 2008 (and related materials)
8. AARP Handout on HB 2008
9. House Bill 1778 (and related materials)

North Carolina General Assembly

House Committee on Finance

Minutes

~

July 18, 2006

The House Committee on Finance met on Tuesday, July 18, 2006 at 8:30 am in Room 544 of the Legislative Office Building. The following members were present: Chairpersons Alexander, Gibson, Luebke, and Wainwright; Vice-Chairs Daughtridge, Hill, Ross, Weiss, and Womble; and Representatives B. Allen, Blackwood, Capps, Carney, Faison, Folwell, Glazier, Hackney, Harrell, Holliman, Insko, Lewis, Lucas, McGee, Rayfield, Underhill, Walend, and Wiley. Ex-Officio member Representative Cunningham as well as Sergeant-at-Arms, Will Heath, Fred Hines, Jerald Perry, and Dusty Rhodes were also present. Staff persons present included Cindy Avrette, Rodney Bizzell, David Crotts, Brenna Erford, Canaan Huie, Martha Walston, and Bob Weiss. The Agenda and Visitor Registration Sheets are attached and incorporated into these minutes as **attachments 1 and 2.**

Chairman Wainwright called the meeting to order at 8:33 am and recognized the six (6) pages present: (1) Chris Paige of Forsyth County, sponsored by Representative Parmon; (2) Callie Ruffin of Edgecombe County, sponsored by Representative Tolson; (3) Rachael Creech of Wake County, sponsored by Speaker Black; (4) Christi Champion of Guilford County, sponsored by Speaker Black; (5) Cassie Edwards of Pitt County, sponsored by Representative Warren; and (6) Brittany Wade of Northampton County, sponsored by Speaker Black.

The first bill under the Committee's consideration was **HB 1025 – VARIOUS ABC LAW CHANGES** (see **attachment 3**). Representative Luebke was first recognized and explained that this bill was in the House Finance Committee for a concurrence recommendation. He stated further that the original bill passed by the House created a new "Winemaking on Premises Permit" and the Senate added various other provisions relating to the sale of alcohol. Representative Luebke said that he is not comfortable with concurring with the Senate on this bill without more discussion on the other provisions added by the Senate. He then moved for a recommendation that the House do not concur with the Senate changes to House Bill 1025 and that conferees be requested. Seeing no further discussion, Chairman Wainwright called the motion to a vote and it carried without objection.

The next bill considered by the Committee was **HB 1522 – FILM INCENTIVE CHANGES** (see **attachment 4**). Representative Gibson was recognized and first said that this bill was sent to the Finance Committee for a concurrence recommendation. He then stated that this bill eliminates the prohibition against claiming both a deduction and a credit for the same qualifying expenses with regard to the film incentives tax credit. He also said that the House preferred a 12% tax credit with the elimination of the double-claim prohibition. He urged the Committee to not concur and request conferees in order for the House and Senate differences to be resolved.

Chairman Wainwright then recognized Senator Boseman who stated that the tax credit was set to the 15% level that the leadership at the General Assembly promised the movie industry last year. Representative Wiley asked if there were movie production companies currently looking at North Carolina that are expecting the 15% tax credit. Sandy Sands of NBC/Universal was recognized and stated that a number of different companies in the movie industry are expecting the General Assembly to provide the tax credit at the 15% level. Representative Hackney was then recognized and asked if there was a fiscal note for the bill. Chairman Wainwright then temporarily displaced the bill while a fiscal note was located and distributed to members.

Chairman McComas then recognized Representative Daughtridge to explain **HB 2744 – ECONOMIC DEVELOPMENT PROGRAM MODIFICATIONS** (see **attachment 5**). He reported to the Committee that the Senate passed House Bill 2744 and was sending an amendment adopted on the Senate floor over to the House for concurrence. He stated that the amendment makes several technical changes to the internet data center facilities sales tax exemption that was enacted as part of the 2006 Appropriations Act. Chairman Wainwright then temporarily displaced the bill as a request was made for a copy of the floor amendment adopted by the Senate on the bill.

The following bill under discussion was **HB 1267 – EXCLUDE PENSIONS FROM INCOME TAX** (see **attachment 6**). Chairman Wainwright announced that this bill was being considered for discussion purposes only. He then recognized Representative Underhill who explained that currently retirees vested after 1989 are only allowed to exclude up to $4,000 from taxable income received from a North Carolina, other state government, or federal retirement plan. She then stated that this bill would allow all retirees, regardless of the date of vesting, to receive a full income tax exemption on pensions from State, local, and federal retirees. Under the bill, retirees receiving pensions from other state governments would also receive tax exemptions up to the extent that their home state would exempt North Carolina government pension income, however, this amount cannot be less than $4,000 as provided by current law. Following the explanation, Representative Faison was recognized and expressed his support for the bill and stated that many retirees on fixed income are in great need for tax relief. Chairman Wainwright then recognized Vern Pike of the Military Officers Association of America (MOAA) who spoke in support of the bill and explained how this bill would keep retirees in North Carolina and not encourage them to move elsewhere. Representative Ross was then recognized and asked if a proposal would be formulated next session that had less impact on the state budget. In response, Representative Underhill was recognized and stated that she would be spending more time next year trying to work out a compromise.

Copies of the Senate floor amendment having been distributed, Chairman Wainwright then replaced **HB 2744 – ECONOMIC DEVELOPMENT PROGRAM MODIFICATIONS** (see **attachment 5**) before the Committee. Representative Hackney was then recognized and asked if the amendment offered on the Senate floor had a fiscal impact on the State budget. Chairman Wainwright recognized Canaan Huie of the Bill Drafting Division who stated that the amendment did not have a fiscal impact. Representative Daughtridge was then recognized and moved that the Committee recommend that the House do concur with the Senate changes to House Bill 2744. As there was no further debate, Chairman Wainwright called the motion to a vote and it carried by consent.

Once the fiscal note was distributed to the Committee, Chairman Wainwright then replaced **HB 1522 – FILM INCENTIVE CHANGES** (see **attachment 4**) on the calendar for the Committee's consideration. Representative Gibson was then recognized and again moved that the Committee recommend that the House do not concur and request conferees on House Bill 1522.

Senator Boseman was then recognized and stated that Representative McComas, a primary sponsor on the bill, wanted the Committee to recommend that the House do concur on the bill. Seeing no further discussion, Chairman Wainwright called the motion to a vote and it carried without objection.

The following bill considered by the Committee was **HB 2008 – REENACT LONG-TERM CARE INSURANCE TAX CREDIT** (see **attachment 7**). Chairman Wainwright first announced that this bill would be considered for discussion only and recognized Representative Luebke to explain the bill. Representative Luebke stated that the bill would reinstate the long-term care insurance tax credit that expired in 2004. Following the explanation, Chairman Wainwright recognized Richard Hatch of the AARP who requested that the Chairman distribute a handout giving an overview of the AARP's position (see **attachment 8**) on this bill. He explained that this bill had received a great deal of support from the citizens of North Carolina and urged the Committee to support the bill. He also stated that he believes that the amount that North Carolina spends on long-term care under Medicaid could be reduced as residents would be given an incentive to purchase private long-term care policies. Polly Williams of the NC Coalition on Aging was then recognized and affirmed Mr. Hatch's comments as she spoke in support of the bill. Chairman Wainwright then stated that the House Finance Committee supported the bill but a further discussion needed to be made during the long session next year so the budget details created by providing the credit could be resolved. The discussion on House Bill 2008 was concluded with Vickie Young of the Department of Insurance being recognized and urging the Committee to support a long-term care insurance tax credit, if one is introduced next session.

The final bill under the Committee's consideration was **HB 1778 – RISK-BASED ENVIRONMENTAL REMEDIATION/FUND** (see **attachment 9**). Representative Gibson was first recognized to explain the bill. He stated that this bill would establish a program to authorize the Department of Environment and Natural Resources to approve the cleanup of contaminated property based on site-specific, risk-based standards. He reported that the policy part of the bill had been settled but the controversy has surrounded the fee portion of the bill. Representative Faison was then recognized and stated that this bill only requires that the ground water being cleaned up in the bill is cleaned up only to a certain standard relative to the use of the land. He stated that contaminated land should be cleaned up to given standard, regardless the use of the land. Representative Insko was then recognized and said that the $3,000 fee would be applied for up to 25 acres with a maximum fee of $75,000. She then explained the importance of clean water for North Carolina.

Chairman Wainwright then recognized Molly Diggins of the NC Sierra Club who stated that companies should have to provide compensation if they do not wish to clean up a contaminated site. Franklin Freeman from the Governor's office was recognized and urged the Committee to give this bill additional time to allow a consensus to be reached. Preston Howard of the NC Manufacturing and Chemistry Council was recognized and spoke in support of the bill and stated that the Department of Environment and Natural Resources had not come back to them with evidence that the $3,000 fee provided in the bill was not sufficient. Chairman Wainwright then recognized Representative Hackney who urged the Committee to support a bill that would require entities to properly clean up contaminated sites. Representative Womble was then recognized and stated that the bill was not ready to be approved with many of the affected parties opposing the bill. Representative Weiss stated that the bill was not a compromise as many of the interested parties are not in support of the bill. She then urged Committee members to oppose the bill in its current form. In response, Representative Gibson was recognized and stated that the parties had been at the table for over five years and doing nothing this session would be doing harm to North Carolina.

As the time allotted for the Committee meeting was approaching an end, Chairman Wainwright adjourned the meeting at 9:50 am.

Respectfully submitted,

Representative William Wainwright
Presiding Chair

Jason A. Cannon
Clerk, House Committee on Finance

Attachments:

1. Agenda
2. Visitor Registration Sheets
3. House Bill 1025 (and related materials)
4. House Bill 1522 (and related materials)
5. House Bill 2744 (and related materials)
6. House Bill 1267 (and related materials)
7. House Bill 2008 (and related materials)
8. AARP Handout on HB 2008
9. House Bill 1778 (and related materials)

AGENDA

ATTACHMENT 1

House Finance Committee

Tuesday, July 18, 2006
8:30 a.m.
Room 544 LOB
Chaired by: Rep. Wainwright

Co-Chairs

Representative Martha Alexander
Representative Pryor Gibson
Representative Julia Howard
Representative Paul Luebke
Representative Danny McComas
Representative William Wainwright

Call to Order

Introduction of Pages

Bills:

HB 1025 **VARIOUS ABC LAW CHANGES** *Rep. Luebke*
(FOR CONCURRENCE)

HB 1267 **EXCLUDE PENSIONS FROM INCOME TAX** *Rep. Underhill*
(FOR DISCUSSION ONLY)

HB 1522 **FILM INCENTIVE CHANGES** *Rep. McComas*
(FOR CONCURRENCE)

HB 1778 **RISK-BASED ENVIRONMENTAL REMEDIATION/FUND**
Reps. Gibson & LaRoque

HB 2008 **REENACT LONG-TERM CARE INSURANCE TAX CREDIT**
(FOR DISCUSSION ONLY) *Reps. Howard, Nye, Wright, & England*

HB 2744 **ECONOMIC DEVELOPMENT PROGRAM MODIFICATIONS**
(FOR CONCURRENCE) *Reps. Owens & Daughtridge*

Adjournment

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on **FINANCE** will meet as follows:

DAY & DATE: **Tuesday, July 18, 2006**

TIME: **8:30 a.m.**

LOCATION: **Room 544, LOB**

The following bills will be considered (Bill #, Short Title, and Bill Sponsor):

HB 1025 – VARIOUS ABC LAW CHANGES – Rep. Luebke (FOR CONCURRENCE)

HB 1267 – EXCLUDE PENSIONS FROM INCOME TAX – Rep. Underhill (FOR DISCUSSION ONLY)

HB 1522 – FILM INCENTIVE CHANGES – Rep. McComas (FOR CONCURRENCE)

HB 1778 – RISK-BASED ENVIRONMENTAL REMEDIATION/FUND – Reps. Gibson & LaRoque

HB 2008 – REENACT LONG-TERM CARE INSURANCE TAX CREDIT – Reps. Howard, Nye, Wright, & England (FOR DISCUSSION ONLY)

HB 2744 – ECONOMIC DEVELOPMENT PROGRAM MODIFICATIONS – Reps. Owens & Daughtridge (FOR CONCURRENCE)

Respectfully,
Representatives Alexander, Gibson, Howard, Luebke, McComas, and Wainwright
Chairs

I hereby certify this notice was filed by the committee clerk at the following offices at **3:10pm** on **July 17, 2006**:

X Principal Clerk
X Reading Clerk - House Chamber

Jason A. Cannon (Committee Clerk)

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — July 18, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Cameron Contrizano	Daily Bulletin
Molly Ryan	NCSBA
Leanne Winner	NCSBA
Nancy Thompson	MCIC
Preston Howard	MCIC
Lynda McCrae	HHS
Jim Mellon	?
John McKay	Gov Office
Kathy Hawkins	PNGgreen Energy

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — July 18, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Marie Lutz	GSK
DAVID BARNES	Pfizer Strategies
Penny Hutaff	N.C.B.A.
Alastair Macaulay	NCHBA
Daniel Bacon	KCCH
Lee Hoof	
Cathy Handy	DENR
AMY SIMMS	NCDENR
Jennifer Bumgarner	Governor's Office
Sam Sa	WCSR
SUSANNE STREB	NCRA

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — July 18, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rev. Mark Creech	CAC
Polly Williams	NC Coalition on Aging
Mary Edwards	DAAS
Diana D. Hatch	AARP
Wendy Kelly	HMW
Anonymous	NCHCA
Heather Randell	NC Sierra Club
Amanda Ward	NC Sierra Club
J R Peter	NCEDA
Amy Gindler	HANC
Steve Wall	DENR
Doug Dieving	NCILNA
Wade Rawlins	News & Observer
Tom Bean	RAN - NCWU NC ED

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — July 18, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Erin Kinsey	NC Conservation Network
Charlotte Jesneck	NC DENR
Karl Knapp	NCDOR
Sam McEwen	NCDOR
Anna Mitchell	NCDOR
Molly Diggins	Sierra Club
Pennis Streets	NCDAAS, DHHS
Dick Hatch	AARP
Ryan Presley	Rep. Glazier

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 1025

Senate Finance Committee Substitute Adopted 7/11/06

Short Title: Various ABC Law Changes. (Public)

Sponsors:

Referred to:

March 31, 2005

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS CHANGES TO THE ALCOHOL BEVERAGE CONTROL LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-1001 is amended by adding a new subdivision to read:

"(17) Winemaking on Premises Permit. – A permit may be issued to a business, located in a jurisdiction where the sale of unfortified wine is allowed, where individual customers who are 21 years old or older may purchase ingredients and rent the equipment, time, and space to make unfortified wine for personal use in amounts set forth in 27 C.F.R. § 24.75. Except for wine produced for testing equipment or recipes and samples pursuant to this subdivision, the permit holder shall not engage in the actual production or manufacture of wine. Samples may be consumed on the premises only by a person who has a nonrefundable contract to ferment at the premises, and the samples may not exceed one ounce per sample. All wine produced at a winemaking on premises facility shall be removed from the premises by the customer and may only be used for home consumption and the personal use of the customer."

SECTION 2. G.S. 18B-307 reads as rewritten:

"**§ 18B-307. Manufacturing offenses.**

(a) Offenses. – It shall be unlawful for any person, except as authorized by this Chapter, to:

(1) Sell or possess equipment or ingredients intended for use in the manufacture of any alcoholic beverage, except equipment and ingredients provided under a Brew on Premises permit or a Winemaking on Premises permit; or

(2) Knowingly allow real or personal property owned or possessed by him to be used by another person for the manufacture of any alcoholic beverage, except pursuant to a Brew on Premises permit or a Winemaking on Premises permit.

(b) Unlawful Manufacturing. – Except as provided in G.S. 18B-306, it shall be unlawful for any person to manufacture any alcoholic beverage, except at an establishment with a Brew on Premises permit or a Winemaking on Premises permit, without first obtaining the applicable ABC permit and revenue licenses.

(c) Second Offense of Manufacturing. – A second offense of unlawful manufacturing of alcoholic beverage shall be a Class I felony."

SECTION 3. G.S. 18B-902(d) is amended by adding two new subdivisions to read:

"(38) Winemaking on Premises permit – $400.00.

(39) Wine shipper packager permit – $100.00."

SECTION 4. G.S. 18B-1001.1(c) reads as rewritten:

"(c) A wine shipper permittee may contract with the holder of a wine shipper packager permit for the packaging and shipment of wine pursuant to this section. The direct shipment of wine by wine shipper or wine shipper packager permittees ~~made~~ pursuant to this section shall be made by approved common carrier only. Each common carrier shall apply to the Commission for approval to provide common carriage of wines shipped by holders of permits issued pursuant to this section.

Each common carrier making deliveries pursuant to this section shall:

(1) Require the recipient, upon delivery, to demonstrate that the recipient is at least 21 years of age by providing a form of identification specified in G.S. 18B-302(d)(1).

(2) Require the recipient to sign an electronic or paper form or other acknowledgment of receipt as approved by the Commission.

(3) Refuse delivery when the proposed recipient appears to be under the age of 21 years and refuses to present valid identification as required by subdivision (1) of this subsection.

(4) Submit any other information that the Commission shall require.

All wine shipper and wine shipper packager permittees shipping wines pursuant to this section shall affix a notice in 26-point type or larger to the outside of each package of wine shipped within or to the State in a conspicuous location stating: "CONTAINS ALCOHOLIC BEVERAGES; SIGNATURE OF PERSON AGED 21 YEARS OR OLDER REQUIRED FOR DELIVERY". Any delivery of wines to a person under 21 years of age by a common carrier shall constitute a violation of G.S. 18B-302(a)(1) by the common carrier. The common carrier and the wine shipper or wine shipper packager permittee shall be liable only for their independent acts."

SECTION 5. G.S. 18B-1001.2 reads as rewritten:

"**§ 18B-1001.2. Additional wine shipping requirements.**

(a) A wine shipper permittee shall:

(1) Compile and submit to the Commission quarterly a summary indicating all wine products shipped, including brand and price of each

product, date of each shipment, quantity of each shipment, and amount of excise and sales tax remitted to the Department of Revenue. The report shall include all wine products shipped on the permittee's behalf under contract with a wine shipper packager.

(2) Register with the Department of Revenue as a wine shipper permittee and provide any additional information required by the Department.

(b) The Commission may adopt rules to carry out the provisions of this section and other related provisions governing the direct shipping of wine."

SECTION 6. Article 10 of Chapter 18B of the General Statutes is amended by adding a new section to read:

"**§ 18B-1001.3. Authorization of wine shipper packager permit.**

The holder of a wine shipper packager permit may provide services for the warehousing, packaging, and shipment of wine on behalf of a winery holding a wine shipper permit. A wine shipper packager permit authorizes the holder to receive, in closed containers, wine produced by and belonging to a wine shipper permittee and to place the unopened wine in containers or packaging materials as a service to the wine shipper permittee in connection with the marketing and sale of its wine products. A wine shipper packager may package and return wine products to the wine shipper permittee or, on behalf of the wine shipper permittee, may package and ship wine products in closed containers to individual purchasers inside and outside this State in accordance with the provisions of G.S. 18B-1001.1. The permit may be issued to a USDA-approved company specializing in warehousing and contract packaging."

SECTION 7. G.S. 18B-1006(a) reads as rewritten:

"(a) School and College Campuses. – No permit for the sale of malt beverages, unfortified wine, or fortified wine shall be issued to a business on the campus or property of a public school or college, other than at a regional facility as defined by G.S. 160A-480.2 operated by a facility authority under Part 4 of Article 20 of Chapter 160A of the General Statutes except for a public school or college function, unless that business is a hotel or a nonprofit alumni organization with a mixed beverages permit or a special occasion permit. This subsection shall not apply on property owned by a local board of education which was leased for 99 years or more to a nonprofit auditorium authority created prior to 1991 whose governing board is appointed by a city board of aldermen, a county board of commissioners, or a local school board. This subsection shall also not apply to the constituent institutions of The University of North Carolina with respect to the sale of beer and wine at performing arts centers located on property owned or leased by the institutions if the seating capacity does not exceed 2,000 ~~seats.~~seats, or to any golf courses owned or leased by the institutions and open to the public for use."

SECTION 8. G.S. 18B-108 reads as rewritten:

"**§ 18B-108. Sales on trains.**

Alcoholic beverages may be sold on railroad trains in this State upon compliance with Article 2C of Chapter 105 of the General Statutes. Malt beverages, unfortified wine, and fortified wine may be sold and delivered by any wholesaler or retailer

licensed in this State to an officer or agent of a rail line that carries at least 60,000 passengers annually."

SECTION 9. G.S. 18B-1001(16) reads as rewritten:

"**§ 18B-1001. Kinds of ABC permits; places eligible.**

When the issuance of the permit is lawful in the jurisdiction in which the premises are located, the Commission may issue the following kinds of permits:

...

(16) Wine Shop Permit. – A wine shop permit authorizes the retail sale of malt beverages, unfortified wine, and fortified wine in the manufacturer's original container for consumption off the premises, and authorizes wine tastings on the premises conducted and supervised by the permittee in accordance with subdivision (15) of this section. It also authorizes the holder of the permit to ship malt beverages, unfortified wine, and fortified wine in closed containers to individual purchasers inside and outside the State. The permit may be issued for retail businesses whose primary purpose is selling malt beverages and wine for consumption off the premises and regularly and customarily educating consumers through tastings, classes, and seminars about the selection, serving, and storing of wine. The holder of the permit is authorized to sell unfortified wine for consumption on the premises, provided that the sale of wine for consumption on the premises does not exceed forty percent (40%) of the establishment's total sales for any 30-day period. ~~The sale of wine for consumption on the premises shall be limited to those amounts that remain in opened bottles upon the conclusion of an authorized wine tasting, and individual servings shall not exceed four ounces per glass.~~The holder of a wine-tasting permit not engaged in the preparation or sale of food on the premises is not subject to Part 6 of Article 8 of Chapter 130A of the General Statutes."

SECTION 10. This act is effective when it becomes law.

HOUSE BILL 1025:
Various ABC Law Changes

BILL ANALYSIS

Committee:	House Finance	**Date:**	July 15, 2006
Introduced by:	Rep. Luebke	**Summary by:**	Cindy Avrette
Version:	Second Edition		Committee Counsel

SUMMARY: ***House Bill 1025 is in House Finance for a recommendation on whether the full House should concur in the changes made by the Senate. The original bill creates a new "Winemaking on Premises" permit to businesses where customers may purchase ingredients and rent the equipment, time, and space to make unfortified wine for personal use.***

The Senate added the following provisions to the bill:

- ***It would allow a third party business to contract with a wine shipper permittee for the packaging and shipment of wine. (Sections 4-6)***
- ***It would incorporate the contents of Sen. Rand's Senate Bill 2035, which would allow the sale of beer and wine at golf courses owned or leased by constituent institutions of the UNC. (Section 7)***
- ***It would allow a beer and wine wholesaler to sale and deliver beer and wine to an officer or agent of a rail line that carries at least 60,000 passengers annually. (Section 11)***
- ***It would make changes to the wine shop permit. (Section 12)***

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 1025 (Second Edition)

SHORT TITLE: Various ABC Law Changes.

SPONSOR(S): Representative Luebke

	FISCAL IMPACT				
	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
GENERAL FUND					
REVENUES:	See "Assumptions and Methodology" p.2				
EXPENDITURES:	Possible fiscal impact, but is not assumed significant.				
Correction	No significant impact anticipated.				
Judicial	Possible fiscal impact, but is not assumed significant. See "Assumptions and Methodology" p.4				
ADDITIONAL PRISON BEDS*	None anticipated. Possible, small impact on local jails.				
POSITIONS: (cumulative)	None anticipated.				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Alcoholic Beverage Control Commission; Department of Correction; Judicial Branch; Local Governments.

EFFECTIVE DATE: When it becomes law.

**This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.*

BILL SUMMARY

Section 1. Amends G.S. 18B-1001 to allow the Alcoholic Beverage Control Commission to issue permits to winemaking-on-premises businesses, thereby authorizing such businesses to sell ingredients and rent equipment, time, and space for the production of unfortified wine for personal use by individual consumers who are at least 21 years old, and only in jurisdictions where unfortified wine sales are permitted. Also prohibits the manufacture of unfortified wine by a permit holder, excluding samples for testing recipes or equipment, and requires that any wine produced must be for the personal use of the customer only.

Section 2. Rewrites G.S. 18B-307 to prohibit:

- The sale or possession of equipment or ingredients intended for use in manufacturing an alcoholic beverage, except that allowed under a Brew on Premises or Winemaking on Premises permit.
- Knowingly allowing another person to use one's real or personal property for the manufacture of an alcoholic beverage, except that allowed under a Brew on Premises or Winemaking on Premises permit.
- The manufacture of an alcohol beverage without the applicable ABC permit and revenue licenses, except for an establishment with a Brew on Premises or Winemaking on Premises permit.

Section 3. Amends G.S. 18B-902(d) to establish a Winemaking on Premises permit fee of $400, and a Wine Shipper Packager permit fee of $100.

Section 4. Amends G.S. 18B-1001.1(c) to authorize a wine shipper permittee to contract with a holder of a wine shipper packager permit for the packaging and shipment of wine.

Section 5. Amends G.S. 18B-1001.2 to require the details of shipments under the contract to be compiled and submitted to the Alcoholic Beverage Control Commission as part of the permittee's quarterly report.

Section 6. Enacts new G.S. 18B-1001.3 to authorize the holder of a wine shipper packager permit to provide warehousing, packaging, and shipment services to a winery that has a wine shipper permit.

Section 7. Amends G.S. 18B-1006(a) to exempt from the prohibition against alcoholic sales golf courses that are open to the public and owned or leased by schools and college campuses.

Section 8. Amends G.S. 18B-108 to permit malt beverages, unfortified wine, and fortified wine to be sold to rail lines that carry at least 60,000 passengers annually.

Section 9. Amends G.S. 18B-1001(16) to delete the restrictions on wine that can be sold on the premises of establishments holding wine tasting permits, and provide that these premises are not subject to the regulations of food and lodging facilities under G.S. 130A-247 through 130A-250, unless they are also engaged in the preparation or sale of food.

Source: Bill Digest H.B. 1025 (03/31/0200)

ASSUMPTIONS AND METHODOLOGY

General Fund Revenue

H.B. 1025 creates a $400 fee for each winemaking on premises permit. While it is unknown how many businesses would apply for the permit, a similar permit for brewing beer on the premises currently has no permit holders. Therefore, it is assumed that any revenue generated from the winemaking on premises permit fee will be an insignificant amount. The second edition also makes several changes to ABC laws; however, none of these changes would have a significant fiscal impact.

Department of Correction – Division of Prisons

The Sentencing and Policy Advisory Commission prepares prison population projections for each criminal penalty bill. The Commission assumes for each bill that increasing criminal penalties does not have a deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume savings due to deterrent effects for this bill or any criminal penalty bill. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available over the immediate five-year horizon, or beyond.*

In accordance with G.S. 18B-102(b), any first offense under this bill is a Class 1 misdemeanor. A second or subsequent manufacturing offense is a Class I felony under G.S. 18B-307(b). Because the proposal creates new offenses, there is no historical data from which to estimate its impact on the State's prison population. Thus, it is not known how many offenders might be convicted for these manufacturing offenses, or how many offenders could be repeat offenders. *However, Fiscal Research does not anticipate a significant amount of new charges or convictions as a result of this proposal.*

Class 1 misdemeanor: In FY 2004-05, 19% of Class 1 misdemeanor convictions resulted in active sentences, with an average estimated time served of 30.7 days. *Because offenders serving active sentences of 90 days or less are housed in county jails, first offenses under this proposal would not have a significant impact on the prison population. The impact on local jail populations is not known.*

Class I felony: In FY 2004-05, 15% of Class I convictions resulted in active sentences, with an average estimated time served of 7 months; 85% of convictions resulted in community or intermediate sentences, predominantly special, intensive, or general supervision probation. *Though presumed unlikely, if twelve new Class I convictions were to occur for the new repeat offense per year, the combination of active sentences and probation revocations would necessitate one additional prison bed the first year, and four additional prison beds the second.* Assuming this threshold and a medium custody level, the construction of additional prison beds could cost the State $65,340 the first year, and $282,269 the second year; operating costs could be $26,680 the first year, and $109,922 the second.

Department of Correction – Division of Community Corrections

Assuming some additional intermediate or community sentencing, additional costs for probation supervision could also be incurred. General supervision from a probation officer costs the Division of Community Corrections $1.93 per offender, per day. Special sanctions under intermediate sentences generate higher costs. Intensive supervision probation, the most commonly

utilized intermediate sanction, costs $12.95 (including probation officer cost) per offender per day and is for an average of six months. Electronic house arrest costs $8.64 (including probation officer cost). Such costs are projected to begin in FY 2007-2008, due to the effective date of December 1 and the lag time between charge and conviction.

In addition, offenders supervised by DCC are required to pay a $30 per month supervision fee. Those on electronic house arrest or electronic monitoring must also pay a one-time $90 fee. This money is collected by the Court System and goes to the General Fund. The percentage of fees actually collected cannot be determined from the Court's records, but survey information indicates that the compliance rate for supervised probationers is around 48%.

Judicial Branch

For most criminal penalty bills, the Administrative Office of the Courts (AOC) provides Fiscal Research with an analysis of the fiscal impact of a specific bill. For such bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

Currently, the AOC has only one offense code for existing manufacturing offenses under G.S. 18B-307: "Manufacture Liquor No Permit," which is coded as a Class 1 misdemeanor. In FY 2004-05, there was 1 conviction under G.S. 18B-307(b), "Manufacture Liquor No Permit." However, there is no offense code associated with the Class I felony for second or subsequent conviction of a manufacturing offense.

This lack of an offense code suggests that few charges and convictions occur for existing manufacturing offenses. But it is unclear whether the reference to "liquor" in the offense description for the offense code is an error, or if it simply reflects a lack of prior charges/convictions for the unlawful manufacture of an alcoholic beverage.

Nevertheless, any additional charges resulting from the proposed offenses could increase workload and generate additional costs to the court system. The AOC estimates Class 1 misdemeanor court-time costs of $3,153 per trial, and $224 per plea; Class I felony costs are $6,028 and $274, respectively.

SOURCES OF DATA: NC Alcoholic Beverage Control Commission; Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; and Office of State Construction.

TECHNICAL CONSIDERATIONS: None.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Rodney Bizzell and Bryce Ball

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: July 12, 2006

Signed Copy Located in the NCGA Principal Clerk's Offices

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒Senate Committee Substitute for

HB 1025 A BILL TO BE ENTITLED AN ACT TO MAKE VARIOUS CHANGES TO THE ALCOHOL BEVERAGE CONTROL LAWS.

☒ With recommendation that the House do not concur; request conferees.

(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 _____.

_____ On motion of Representative_____, Committee Amendment No.(s) ___ is/are adopted by EV (_____).

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 1522

Senate Finance Committee Substitute Adopted 7/11/06

Short Title: Film Incentive Changes. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO CONFORM THE TAX CREDIT FOR PRODUCTION COMPANIES TO THE STANDARD TAX TREATMENT WITH RESPECT TO THE DEDUCTION OF BUSINESS EXPENSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-130.5(a)(18) is repealed.

SECTION 2. G.S. 105-130.47(i) is repealed.

SECTION 3. G.S. 105-134.6(c)(9) is repealed.

SECTION 4. G.S. 105-151.29(i) is repealed.

SECTION 5. This act is effective for taxable years beginning on and after January 1, 2007.

HOUSE BILL 1522:
Film Incentive Changes

BILL ANALYSIS

Committee:	House Finance	**Date:**	July 15, 2006
Introduced by:	Rep. McComas	**Summary by:**	Cindy Avrette
Version:	Second Edition		Committee Counsel

SUMMARY: House bill 1522 is in House Finance for a recommendation on whether the full House should concur in the changes made by the Senate. House Bill 1522 eliminates the prohibition against claiming both a deduction and a credit for the same qualifying expenses with regard to the film incentives credit.

CURRENT LAW: In last year's budget, the General Assembly enacted the Film Industry Jobs Incentive. This incentive is a refundable income tax credit equal to 15% of the qualifying expenses spent by a production company[1] in connection with a production. In order to qualify for the credit, the production company must have qualifying expenses of at least $250,000 with respect to the production.[2] The credit expires for qualifying expenses occurring on or after January 1, 2010. The incentive is targeted at feature films, episodic television series, and commercial advertising.

There are several significant limitations on the credit. First, the amount of the credit with respect to a feature film production is capped at $7.5 million. Second, the production may not be any of the following: political advertising, television production of a news program or live sporting event, a radio production, or a production containing obscene material.[3] Third, the production company may not claim both the credit and a deduction with respect to the same expenses. If the production company chooses to claim a credit, it must add back to taxable income, to the extent not included in taxable income, the qualifying expenses that form the basis of the credit.

In order to obtain the credit, the taxpayer must provide on its return a detailed accounting of the qualifying expenses. Qualifying expenses are the total amount spent in North Carolina for:

- Goods and services purchased by a production company in connection with a production. For goods with a purchase price of $25,000 or more, the amount included in qualifying expenses is the purchase price less the fair market value of the good at the time the production is completed.
- Compensation and wages paid by a production company on which it remitted withholding payments to the Department of Revenue. Any amounts paid to an individual whose compensation is in excess of $1,000,000 with respect to a single production cannot be included as a qualifying expense.

The credit may be claimed for the taxable year in which the production activities are completed. The credit is computed based on all of the taxpayer's qualifying expenses incurred with respect to the

---

[1] A production company is a person engaged in the business of making original motion picture, television, or radio images for theatrical, commercial, advertising, or education purposes.

2 In the case of an episodic television series, an entire season of episodes is considered one production.

3 G.S. 14-190.1 defines 'obscene material' as material that meets all of the following conditions: the material depicts or describes in a patently offensive way sexual conduct; the average person applying contemporary community standards relating to the depiction or description of sexual matters would find that the material taken as a whole appeals to the prurient interest in sex; the material lacks serious literary, artistic, political, or scientific value; and the material as used is not protected or privileged under the Constitution of the United States or the Constitution of North Carolina.

production, not just the qualifying expenses incurred during the taxable year. If the credit exceeds the amount of tax imposed for the taxable year reduced by the sum of all credits allowable, the Secretary must refund the excess to the taxpayer. A pass-through entity is considered a taxpayer for purposes of claiming this credit; therefore, it does not distribute the credit among its owners.

BILL ANALYSIS: House Bill 1522, as changed by the Senate, repeals G.S. 105-130.5(a)(18), G.S. 105-134.6(c)(9), G.S. 105-130.47(i), and G.S. 105-151.29(i), which would eliminate the prohibition against claiming both a deduction and a credit for the same qualifying expense.

EFFECTIVE DATE: The bill is effective for taxable years beginning on or after January 1, 2007.

H1522e2-SMRB

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: Senate Bill 1213 (First Edition)

SHORT TITLE: Film Incentive Changes.

SPONSOR(S): Senator Boseman

FISCAL IMPACT ($ MILLION)					
	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES:					
State General Fund	-7.7	-8.1	-8.5	-9.0	-9.5
EXPENDITURES:					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Department of Revenue.

EFFECTIVE DATE: Tax years beginning on or after January 1, 2006.

BACKGROUND INFORMATION: The 2005 General Assembly enacted legislation that allows an income tax credit for 15% of the qualifying production expenses of film and television production companies that spend at least $250,000 on a production in North Carolina. The credit is limited to $7.5 million per feature film and is refundable in cases where the credit exceeds tax liability. Finally, the bill disallowed the credit for expenses incurred for compensation paid to an "individual" in excess of $1 million.

To prevent a doubling up of the tax benefit on the same expenses, the legislation required that companies add back to taxable income the amount of the expenses for which the credit was claimed. However, corporate income tax law already has a general provision requiring taxpayers to add back the amount of a credit to net taxable income. Thus, having an add back for the credit plus an add back for the expense base over-adjusts for the value of the film industry tax credit.

BILL SUMMARY: (1) Makes an exception to the general tax law add back rule for the film industry credit. (2) Clarifies that the expense limit of $1 million for the salary of an employee applies to a production company that hires an actor receiving a salary from another company ("loan-out company").

ASSUMPTIONS AND METHODOLOGY: During the 2005 discussions on the original credit the Department of Commerce provided North Carolina actual expenditure data on five different types of film and television productions that have taken place in recent years, including: (1) cable movie; (2) small feature film; (3) medium feature; (4) episodic television; and (5) television

commercial. The expenditure data was broken down into a number of categories. In addition, the Department's material simulated the potential number of productions for each category for January 2005-June 2007. The simulation was based on discussions with the state film office and other industry specialists in the State regarding recent experience and expectations about the next couple of years

The Department of Commerce, based on new discussions with regional film representatives in the state and the Director of the State Film Office, has revised their estimate of production activity for the industry for the 2006 tax year. The calculations set out below use the revised activity level to calculate the current law credit cost

	($ Million)
Eligible Spending	$112.00
15% Tax Credit Cost	16.80
Less: Credit Add-Back	-1.16*
Tentative Net Credit Cost	$15.64
Less: Expense Base Add-Back	-7.73**
Final Net Credit Cost	$7.91

*Credit amount multiplied by 6.9% corporate income tax rate.
**Expense base multiplied by 6.9% corporate income tax rate.

The annual impact of the bill for the 2006 tax year is equal to the "Expense Base Add Back" number shown in the above calculation. For future years, the credit is expected to grow at the same rate as state personal income. The forecast for this variable comes from Moody's Economy.com, a nationwide forecasting firm used by Fiscal Research for national and state economic forecasts. For the purpose of this analysis, it is assumed that the tax year impact of the proposed change matches up with the fiscal year ending six months after the end of the tax year. Thus, the full impact of the change for the 2006 tax year would be in the 2006-07 fiscal year. This rationale was based on the fact that the small amount of the credit would suggest that taxpayers are unlikely to reduce their quarterly estimated payments sent in during the tax year. Instead, the relief will be taken in the form of lower final income tax payments or higher tax refunds, both of which occur in the months just following the end of the tax year.

SOURCES OF DATA: North Carolina Department of Commerce

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: David Crotts

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: May 30, 2006

Signed Copy Located in the NCGA Principal Clerk's Offices

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒Senate Committee Substitute for

HB 1522 A BILL TO BE ENTITLED AN ACT TO CONFORM THE TAX CREDIT FOR PRODUCTION COMPANIES TO THE STANDARD TAX TREATMENT WITH RESPECT TO THE DEDUCTION OF BUSINESS EXPENSES.

☒ With recommendation that the House do not concur; request conferees.

(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 _____.

_____ On motion of Representative_____, Committee Amendment No.(s) ___ is/are adopted by EV (_____).

CHANGES TITLE

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 2744*

AMENDMENT NO. 1
(to be filled in by Principal Clerk)

H2744-ALY-129 [v.3]

Date 7-12 ,2006

Comm. Sub. [YES]
Amends Title [YES]
Fourth Edition

ADOPTED

Senator Hoyle

moves to amend the bill on page 1, lines 5-6, by rewriting those lines to read:
"TAXPAYERS, AND TO ENHANCE CERTAIN SALES AND USE TAX BENEFITS.";

and on page 15, lines 15-17, by rewriting those lines to read:
"**PART IV. INTERNET DATA CENTER TAX EXEMPTION CHANGES**

SECTION 4.1. G.S. 105-164.3(8e), as enacted by S.L. 2006-66, reads as rewritten:

'(8e) Eligible Internet data center. – A facility that satisfies each of the following conditions:

a. The facility is used primarily or is to be used primarily by a business engaged in ~~Internet~~ "Internet service providers and Web search ~~portals~~ portals" industry 51811, as defined by NAICS.

b. The facility is comprised of a structure or series of structures located or to be located on a single parcel of land or on contiguous parcels of land that are commonly owned or owned by affiliation with the operator of that facility.

c. The facility is located or to be located in a county that was designated, at the time of application for the written determination required under sub-subdivision d. of this subdivision, either an enterprise tier one, two, or three area pursuant to G.S. 105-129.3, regardless of any subsequent change in county enterprise tier status.

d. The Secretary of Commerce has made a written determination that at least two hundred fifty million dollars ($250,000,000) in private funds has been or will be invested in real property or eligible business property, or a combination of both, at the facility within five years after the commencement of construction of the facility.'

SECTION 4.2. G.S. 105-164.13(55), as enacted by S.L. 2006-66, reads as rewritten:

'(55) Sales of electricity for use at an eligible Internet data center and eligible business property to be located and used at an eligible Internet data center. As used in this subdivision, 'eligible business property' is property that is capitalized for tax purposes under the Code and is used either:

a. For the provision of Internet service or Web search portal services as contemplated by G.S. 105-164.3(8e)a., including equipment cooling systems for managing the performance of the property.

b. For the generation, transformation, transmission, distribution, or management of electricity, including exterior substations and other business personal property used for these purposes.

c. To provide related computer engineering or computer science research.

If the level of investment required by G.S. 105-164.3(8e)d. is not timely made, then the exemption provided under this subdivision is forfeited. If the level of investment required by G.S. 105-164.3(8e)d. is timely made but any specific eligible business property is not located and used at an eligible Internet data center, then the exemption provided for ~~the~~ such eligible business property under this subdivision is forfeited. If the level of investment required by G.S. 105-164.3(8e)d. is timely made but any portion of the electricity is not used at an eligible Internet data center, then the exemption provided for ~~the~~ such electricity under this subdivision is forfeited. A taxpayer that forfeits an exemption under this subdivision is liable for all past taxes avoided

as a result of the forfeited exemption, computed from the date the taxes would have been due if the exemption had not been allowed, plus interest at the rate established under G.S. 105-241.1(i). If the forfeiture is triggered due to the lack of a timely investment required by G.S. 105-164.3(8e)d., then interest is computed from the date the taxes would have been due if the exemption had not been allowed. For all other forfeitures, interest is computed from the time as of which the eligible business property or electricity was put to a disqualifying use. The past taxes and interest are due 30 days after the date the exemption is forfeited. A taxpayer that fails to pay the past taxes and interest by the due date is subject to the provisions of G.S. 105-236.'

SECTION 4.3. Section 24.17(c) of S.L. 2006-66 reads as rewritten:

'**SECTION 24.17.(c)** ~~This~~ Subsection (b) of this section becomes effective October 1, 2006, and applies to sales made on or after that date. The remainder of this section is effective when it becomes law.'

SECTION 4.4. Section 4.2 of this part becomes effective October 1, 2006. The remainder of this part is effective when it becomes law.

PART V. EFFECTIVE DATE

SECTION 5. Except as otherwise provided, this act is effective when it becomes law."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED 49-0 FAILED _____ TABLED _____

7-12-06
Janet Pruitt

ADOPTED

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 4

HOUSE BILL 2744*

Committee Substitute Favorable 6/27/06
Committee Substitute #2 Favorable 7/6/06
Fourth Edition Engrossed 7/6/06

Short Title: Economic Development Program Modifications. (Public)

Sponsors:

Referred to:

May 30, 2006

A BILL TO BE ENTITLED

AN ACT TO MAKE MODIFICATIONS TO THE JOB DEVELOPMENT INVESTMENT GRANT PROGRAM, TO EXTEND THE WILLIAM S. LEE QUALITY JOBS AND BUSINESS EXPANSION ACT FOR CERTAIN TAXPAYERS, AND TO EXTEND CERTAIN SALES AND USE TAX REFUNDS.

The General Assembly of North Carolina enacts:

PART I. JDIG CHANGES

SECTION 1.1. G.S. 143B-437.51 reads as rewritten:

"**§ 143B-437.51. Definitions.**

The following definitions apply in this Part:

(1) Agreement. – A community economic development agreement under G.S. 143B-437.57.

(2) Base ~~years.~~period. – The ~~first 24 months following the date set by the Committee for performance to begin under the agreement.~~period of time set by the Committee during which new employees are to be hired for the positions on which the grant is based.

(3) Business. – A corporation, sole proprietorship, cooperative association, partnership, S corporation, limited liability company, nonprofit corporation, or other form of business organization, located either within or outside this State.

(4) Committee. – The Economic Investment Committee established pursuant to G.S. 143B-437.54.

(5) Eligible position. – A position created by a business and filled by a new full-time employee in this State during the base ~~years or in subsequent years of a grant.~~period.

(5a) Enterprise tier. – The classification assigned to an area pursuant to G.S. 105-129.3.

(6) Full-time employee. – A person who is employed for consideration for at least 35 hours a week, whose wages are subject to withholding under Article 4A of Chapter 105 of the General Statutes, and who is determined by the Committee to be employed in a permanent position according to criteria it develops in consultation with the Attorney General. The term does not include any person who works as an independent contractor or on a consulting basis for the business.

(7) New employee. – A full-time employee who represents a net increase in the number of the business's employees statewide. ~~The term includes an employee who previously filled an eligible position who is rehired or called back from a layoff that occurs during or following the base years to a vacant position previously held by that employee or to a new position established during or following the base years.~~

(8) Overdue tax debt. – Defined in G.S. 105-243.1.

(9) Related member. – Defined in G.S. 105-130.7A.

(10) Withholdings. – The amount withheld by a business from the wages of employees in eligible positions under Article 4A of Chapter 105 of the General Statutes."

SECTION 1.2. G.S. 143B-437.52 reads as rewritten:

"**§ 143B-437.52. Job Development Investment Grant Program.**

(a) Program. – There is established the Job Development Investment Grant Program to be administered by the Economic Investment Committee. In order to foster job creation and investment in the economy of this State, the Committee may enter into negotiated agreements with businesses to provide grants in accordance with the provisions of this Part. The Committee, in consultation with the Attorney General, shall develop criteria to be used in determining whether the conditions of this section are satisfied and whether the project described in the application is otherwise consistent with the purposes of this Part. Before entering into an agreement, the Committee must find that all the following conditions are met:

(1) The project proposed by the business will create, during the term of the agreement, a net increase in employment in this State by the business.

(2) The project will benefit the people of this State by increasing opportunities for employment and by strengthening this State's economy by, for example, providing worker training opportunities, constructing and enhancing critical infrastructure, increasing development in strategically important industries, or increasing the State and local tax base.

(3) The project is consistent with economic development goals for the State and for the area where it will be located.

(4) A grant under this Part is necessary for the completion of the project in this State.

(5) The total benefits of the project to the State outweigh its costs and render the grant appropriate for the project.

(b) Cap. – The maximum number of agreements the Committee may enter into each calendar year is 25.

(c) Ceiling. – ~~The~~ Except as provided in this section, the maximum amount of total annual liability for grants for agreements entered into in any single calendar ~~year~~ year, including amounts transferred to the Utility Account pursuant to G.S. 143B-437.61, may not exceed fifteen million dollars ($15,000,000). The maximum amount of total annual liability for grants for agreements entered into in 2006, including amounts transferred to the Utility Account pursuant to G.S. 143B-437.61, may not exceed thirty million dollars ($30,000,000). No agreement may be entered into that, when considered together with other existing agreements entered into during that calendar year, could cause the State's potential total annual liability for grants entered into in that calendar year to exceed this amount.

(d) Measuring Employment. – For the purposes of subdivision (a)(1) of this section and G.S. 143B-437.51(5), 143B-437.51(7), and 143B-437.57(a)(11), the Committee may designate that the increase or maintenance of employment is measured at the level of a division or another operating unit of a business, rather than at the business level, if both of the following conditions are met:

(1) The Committee makes an explicit finding that the designation is necessary to secure the project in this State.

(2) The ~~designation~~ agreement contains terms to ensure that the business does not create eligible positions by transferring or shifting to the project existing positions from another project of the business or a related member of the business."

SECTION 1.3. G.S. 143B-437.53(b) reads as rewritten:

"(b) Ineligible Businesses. – A project that consists solely of retail facilities is not eligible for a grant under this Part. If a project consists of both retail facilities and nonretail facilities, only the portion of the project consisting of nonretail facilities is eligible for a grant, and only the withholdings from employees in eligible positions that are employed exclusively in the portion of the project that represents nonretail facilities may be used to determine the amount of the grant. If a warehouse facility is part of a retail facility and supplies only that retail facility, the warehouse facility is not eligible for a grant. For the purposes of this Part, catalog distribution centers are not retail facilities.

A project that consists of a professional or semiprofessional sports team or ~~club~~ club, other than a professional motorsports racing team, is not eligible for a grant under this Part."

SECTION 1.4. G.S. 143B-437.55 reads as rewritten:

"**§ 143B-437.55. Applications; fees; reports; study.**

(a) Application. – A business shall apply, under oath, to the Committee for a grant on a form prescribed by the Committee that includes at least all of the following:

(1) The name of the business, the proposed location of the project, and the type of activity in which the business will engage at the project site or sites.
(2) The names and addresses of the principals or management of the business, the nature of the business, and the form of business organization under which it is operated.
(3) The financial statements of the business prepared by a certified public accountant and any other financial information the Committee considers necessary.
(4) The number of eligible positions proposed to be created ~~during the base years and thereafter~~for the project and the salaries for these positions.
(5) An estimate of the total withholdings.
(6) Certification that the business will provide health insurance to ~~all~~ full-time employees of the ~~project.~~project as required by G.S. 143B-437.53(c).
(7) Information concerning other locations, including locations in other states and countries, being considered for the project and the nature of any benefits that would accrue to the business if the project were to be located in one of those locations.
(8) Information concerning any other State or local government incentives for which the business is applying or that it has an expectation of receiving.
(9) Any other information necessary for the Committee to evaluate the application.

A business may apply, in one consolidated application in a form and manner determined by the Committee, for a grant on its own behalf as a business and for grants on behalf of the related members of the business who may qualify under this Part.

The Committee will consider an application by a business for grants on behalf of its related members only if the related members for whom the application is submitted have assigned to the business any claim of right the related members may have under this Part to apply for grants individually during the term of the agreement and have agreed to cooperate with the business in providing to the Committee all the information required for the initial application and the agreement, and any other information the Committee may require for the purposes of this Part. The applicant business is responsible for providing to the Committee all the information required under this Part.

If a business applies for a grant on behalf of its related members, the related members included in the application may be permitted to meet the qualifications for a grant collectively by participating in a project that meets the requirements of this Part. The amount of a grant may be calculated under the terms of this Part as if the related members were all collectively one business entity. Any conditions for a grant, other than the number of eligible positions created, apply to each related member who is listed in the application as participating in the project. The grants awarded shall be paid to the applicant business. A grant received under this Part by a business may be

apportioned to the related members in a manner determined by the business. In order for an agreement to be executed, each related member included in the application must sign the agreement and agree to abide by its terms.

(b) Application Fee. – When filing an application under this section, the business must pay the Committee a fee of five thousand dollars ($5,000). The fee is due at the time the application is filed. The Secretary of Commerce, the Secretary of Revenue, and the Director of the Office of State Budget and Management shall determine the allocation of the fee imposed by this section among their agencies. The proceeds of the fee are receipts of the agency to which they are credited.

(c) Annual Reports. – The Committee shall publish a report on the Job Development Investment Grant Program on or before April 30 of each year. The report shall include the following:

(1) A listing of each community economic development agreement negotiated and entered into during the preceding calendar year, including the name of the business, the cost/benefit analysis conducted by the Committee during the application process, a description of the project, the term of the agreement, the percentage used to determine the amount of the grant, and the amount of the grant made under the agreement during that year.

(2) An update on the status of projects under agreements entered into before the preceding calendar year.

(3) The number and enterprise tier area of eligible positions created by projects with respect to which grants were awarded.

(3a) A listing of the employment level for all businesses receiving a grant and any changes in those levels from the level of the next preceding year.

(4) The wage levels of all eligible positions created by projects with respect to which grants are awarded, aggregated and listed in increments of five thousand dollars ($5,000).

(5) The amount of new income tax revenue received from withholdings related to the projects for which grants were awarded.

(6) The criteria developed by the Committee, in consultation with the Attorney General, to implement this Part and any changes in those criteria from the previous calendar year.

(7) The effectiveness of the program in recruiting new and expanding businesses.

(8) The environmental impact of businesses that have received grants under the program.

(9) The geographic distribution of grants, by number and amount, awarded under the program.

(10) An explanation of whether the projects with respect to which agreements are entered into involve new businesses in the State or expanding existing businesses in the State.

(11) A listing of all businesses making an application under this Part and an explanation of whether each business ultimately located the project in this State regardless of whether the business was awarded a grant for the project under this Part.

~~(12) The division and use of fees collected by the Committee under this section and under G.S. 143B-437.58.~~

(13) The total amount transferred to the Utility Account of the Industrial Development Fund under this Part during the preceding year.

(d) Quarterly Reports. – The Committee shall publish a report on the Job Development Investment Grant Program within two months of the end of each quarter. This report shall include a listing of each community economic development agreement negotiated and entered into during the preceding quarter, including the name of the business, the cost/benefit analysis conducted by the Committee during the application process, a description of the project, and the amount of the grant expected to be made under the agreement during the current fiscal year.

(e) Study. – The Committee shall conduct a study to determine the minimum funding level required to implement the Job Development Investment Grant Program successfully. The Committee shall report the results of this study to the House of Representatives Finance Committee, the Senate Finance Committee, the House of Representatives Appropriations Subcommittee on Natural and Economic Resources, the Senate Appropriations Committee on Natural and Economic Resources, and the Fiscal Research Division no later than March 1 of each year."

SECTION 1.5. G.S. 143B-437.56 reads as rewritten:

"**§ 143B-437.56. Calculation of minimum and maximum grants; factors considered.**

(a) Subject to the limitations of subsection (d) of this section, the amount of the grant awarded in each case shall be a percentage of the withholdings of eligible positions. The percentage shall be no less than ten percent (10%) and no more than seventy-five percent (75%) of the withholdings of the eligible positions for a period of years. The percentage used to determine the amount of the grant shall be based on criteria developed by the Committee, in consultation with the Attorney General, after considering at least the following:

(1) The number of eligible positions to be created.

(2) The expected duration of those positions.

(3) The type of contribution the business can make to the long-term growth of the State's economy.

(4) The amount of other financial assistance the project will receive from the State or local governments.

(5) The total dollar investment the business is making in the project.

(6) Whether the project utilizes existing infrastructure and resources in the community.

(7) Whether the project is located in a development zone.

(8) The number of eligible positions that would be filled by residents of a development zone.

(9) The extent to which the project will mitigate unemployment in the State and locality.

(b) The term of the grant shall not exceed 12 years starting with the first year a grant payment is made. The first grant payment must be made within six years after the date on which the grant was awarded. The number of years in the base period for which grant payments may be made shall not exceed five years.

(c) The grant may be based only on eligible positions created during the base ~~years, unless the Committee makes an explicit determination that the grant shall also be based on additional eligible positions created during the remainder of the term of the grant.~~period.

(d) ~~The percentage established in the agreement shall be reduced by one fourth for~~For any eligible position that is located in an enterprise tier four or five ~~area.~~area, seventy-five percent (75%) of the annual grant approved for disbursement shall be payable to the business, and twenty-five percent (25%) shall be payable to the Utility Account pursuant to G.S. 143B-437.61. A position is located in the enterprise tier area that has been assigned to the county in which the project is located at the time the application is filed with the Committee.

(e) A business that is receiving any other grant by operation of State law may not receive an amount as a grant pursuant to this Part that, when combined with any other grants, exceeds seventy-five percent (75%) of the withholdings of the business, unless the Committee makes an explicit finding that the additional grant is necessary to secure the project.

(f) The amount of a grant associated with any specific eligible ~~position~~ position, including any amount transferred to the Utility Account pursuant to G.S. 143B-437.61, may not exceed six thousand five hundred dollars ($6,500) in any year."

SECTION 1.6. G.S. 143B-437.57(a) reads as rewritten:

"(a) Terms. – Each community economic development agreement shall include at least the following:

(1) A detailed description of the proposed project that will result in job creation and the number of new employees to be hired ~~in~~ during the base ~~years and later years.~~period.

(2) The term of the grant and the criteria used to determine the first year for which the grant may be claimed.

(3) The number of eligible positions that are subjects of the grant and a description of those positions and the location of those positions.

(4) The amount of the grant based on a percentage of withholdings.

(5) A method for determining the number of new employees hired during a grant year.

(6) A method for the business to report annually to the Committee the number of eligible positions for which the grant is to be made.

(7) A requirement that the business report to the Committee annually the aggregate amount of withholdings during the grant year.

(8) A provision permitting an audit of the payroll records of the business by the Committee from time to time as the Committee considers necessary.

(9) A provision that requires the Committee to amend an agreement pursuant to G.S. 143B-437.59.

(10) A provision that requires the business to maintain operations at the project location or another location approved by the Committee for at least one hundred fifty percent (150%) of the term of the grant and a provision to permit the Committee to recapture all or part of the grant at its discretion if the business does not remain at the site for the required term.

(11) A provision that requires the business to maintain employment levels in this State at the level of the year immediately preceding the base ~~years.~~period.

(12) A provision establishing the conditions under which the grant agreement may be terminated, in addition to those under G.S. 143B-437.59, and under which grant funds may be recaptured by the Committee.

(13) A provision stating that unless the agreement is amended or terminated pursuant to G.S. 143B-437.59, the agreement is binding and constitutes a continuing contractual obligation of the State and the business.

(14) A provision setting out any allowed variation in the terms of the agreement that will not subject the business to amendment or termination of the agreement under G.S. 143B-437.59.

(15) A provision that prohibits the business from manipulating or attempting to manipulate employee withholdings with the purpose of increasing the amount of the grant and that requires the Committee to terminate the agreement and take action to recapture grant funds if the Committee finds that the business has manipulated or attempted to manipulate withholdings with the purpose of increasing the amount of the grant.

(16) A provision requiring that the business engage in fair employment practices as required by State and federal law and a provision encouraging the business to use small contractors, minority contractors, physically handicapped contractors, and women contractors whenever practicable in the conduct of its business.

(17) A provision encouraging the business to hire North Carolina residents.

(18) A provision encouraging the business to use the North Carolina State Ports.

(19) A provision stating that the State is not obligated to make any annual grant payment unless and until the State has received withholdings from the business in an amount that exceeds the amount of the grant payment.

(20) A provision describing the manner in which the amount of a grant will be measured and administered to ensure compliance with the provisions of G.S. 143B-437.52(c).

(21) A provision stating that any recapture of a grant and any amendment to an agreement reducing the amount of the grant or the term of the agreement must, at a minimum, be proportional to the failure to comply measured relative to the condition or criterion with respect to which the failure occurred.

(22) A provision stating that any disputes over interpretation of the agreement shall be submitted to binding arbitration.

(23) A provision stating that the amount of a grant associated with any specific eligible ~~position~~ position, including any amount transferred to the Utility Account pursuant to G.S. 143B-437.61, may not exceed six thousand five hundred dollars ($6,500) in any year.

(24) A provision stating that the business agrees to submit to an audit at any time that the Committee requires one.

(25) A provision encouraging the business to contract with small businesses headquartered in the State for goods and services."

SECTION 1.7. G.S. 143B-437.58 reads as rewritten:

"**§ 143B-437.58. Grant recipient to submit records.**

(a) No later than March 1 of each year, for the preceding grant year, every business that is awarded a grant under this Part shall submit to the Committee a report showing withholdings as a condition of its continuation in the grant program. In addition, during the base period, the business shall submit to the Committee an annual payroll report showing the eligible positions that ~~are~~ have been created during the ~~base years and the new eligible positions created during each subsequent~~preceding calendar year, and, subsequent to the base period, the business shall submit to the Committee an annual report showing the eligible positions that remain filled at the end of each year of the grant. Annual reports submitted to the Committee shall include social security numbers of individual employees identified in the reports. Upon request of the Committee, the business shall also submit a copy of its State and federal tax returns. Payroll and tax ~~information~~ information, including social security numbers of individual employees and State and federal tax returns, submitted under this subsection is tax information subject to G.S. 105-259. Aggregated payroll or withholding tax information submitted or derived under this subsection is not tax information subject to G.S. 105-259. When making a submission under this section, the business must pay the Committee a fee of one thousand five hundred dollars ($1,500). The fee is due at the time the submission is made. The Secretary of Commerce, the Secretary of Revenue, and the Director of the Office of State Budget and Management shall determine the allocation of the fee imposed by this section among their agencies. The proceeds of the fee are receipts of the agency to which they are credited.

(b) The Committee may require any information that it considers necessary to effectuate the provisions of this Part.

(c) The Committee may require any business receiving a grant to submit to an audit at any time.

(d) The reporting procedures of this section are in lieu of any other general reporting requirements relating to private entities that receive State funds."

SECTION 1.8. G.S. 143B-437.59 reads as rewritten:

"**§ 143B-437.59. Failure to comply with agreement.**

(a) If the business receiving a grant fails to meet or comply with any condition or requirement set forth in an agreement or with criteria developed by the Committee in consultation with the Attorney General, the Committee shall amend the agreement to reduce the amount of the grant or the term of the agreement and may terminate the agreement. Any reduction of the grant is applicable to the grant year immediately following the grant year in which the ~~Committee amends~~business fails to comply with the agreement. The reduction in the amount or the term must, at a minimum, be proportional to the failure to comply measured relative to the condition or criterion with respect to which the failure occurred.

(b) If a business fails to maintain employment at the levels stipulated in the agreement or otherwise fails to comply with any condition of the agreement for any two consecutive ~~years, the Committee shall terminate the agreement.~~years:

(1) If the business is still within the base period established by the Committee, the Committee shall withhold the grant payment for any consecutive year remaining in the base period in which the business fails to comply with any condition of the agreement, and the Committee may extend the base period for up to 24 additional months. Under no circumstances may the Committee extend the base period by more than a total of 24 months. In no event shall the term of the grant be extended beyond the date set by the Committee at the time the Committee awarded the grant.

(2) If the business is no longer within the base period established by the Committee, the Committee shall terminate the agreement.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, if the Committee finds that the business has manipulated or attempted to manipulate employee withholdings with the purpose of increasing the amount of a grant, the Committee shall immediately terminate the agreement and take action to recapture any grant funds disbursed in any year in which the Committee finds the business manipulated or attempted to manipulate employee withholdings with the purpose of increasing the amount of the grant."

SECTION 1.9. G.S. 143B-437.60 reads as rewritten:

"**§ 143B-437.60. Disbursement of grant.**

A business may not receive an annual disbursement of a grant if, at the time of disbursement, the business has received a notice of an overdue tax debt and that overdue tax debt has not been satisfied or otherwise resolved. A business may receive an annual disbursement of a grant only after the Committee has certified ~~to the State Controller~~ that there are no outstanding overdue tax debts and that the business has met the terms and conditions of the agreement. No amount shall be disbursed to a business as a grant

under this Part in any year until the Secretary of Revenue has certified to the Committee (i) that there are no outstanding overdue tax debts of the business and (ii) the amount of withholdings received in that year by the Department of Revenue from the business. A business that has met the terms of the agreement shall make an annual certification of this to the Committee. The Committee shall require the business to provide any necessary evidence of compliance to verify ~~this information and certify to the State Controller~~ that the terms of the agreement have been met. The Committee shall ~~further~~ certify ~~to the State Controller~~ the grant amount ~~of a grant~~ for which the business is eligible under the agreement and the grant amount ~~of a grant~~ for which the business would be eligible under the agreement without regard to G.S. 143B-437.56(d). The ~~State Controller~~Department of Commerce shall remit a check to the business in the amount of the certified grant amount within 90 days of receiving the certification of the Committee."

SECTION 1.10. G.S. 143B-437.61 reads as rewritten:

"**§ 143B-437.61. Transfer to Industrial Development Fund.**

At the time the ~~State Controller~~Department of Commerce remits a check to a business under G.S. 143B-437.60, the ~~State Controller~~Department of Commerce shall transfer to the Utility Account of the Industrial Development Fund an amount equal to the amount certified by the Committee as the difference between the amount of the grant and the amount of the grant for which the business would be eligible without regard to G.S. 143B-437.56(d)."

SECTION 1.11. G.S. 143B-437.62 reads as rewritten:

"**§ 143B-437.62. Expiration.**

The authority of the Committee to enter into new agreements expires January 1, ~~2008.~~2010."

SECTION 1.13. The Department of Commerce shall conduct a comprehensive, systematic study of the Job Development Investment Grant Program. The study shall be completed and submitted to the Chairs of the House of Representatives and Senate Finance Committees and the House of Representatives and Senate Appropriations Committees no later than February 1, 2007. The study shall include an examination of the following:

(1) The costs of the program on an aggregate basis, an enterprise tier area basis, and a project basis. This study shall include an examination of the amount spent per job on an aggregate basis, an enterprise tier area basis, and a project basis.

(2) The costs of the program in relation to other State economic development incentive programs.

(3) The costs of the program in relation to economic development programs located in nearby states and other states with which the State frequently competes for jobs.

(4) The extent to which the program has been utilized in geographically diverse parts of the State and the extent to which the program has been utilized in urban, suburban, and rural settings.

SECTION 1.14. This part is effective when it becomes law.

PART II. BILL LEE ACT CHANGES

SECTION 2.1. G.S. 105-129.2A(a2) reads as rewritten:

"(a2) Sunset for Eligible Major Industries. – Notwithstanding subsection (a) of this section, in the case of a taxpayer that qualifies as an eligible major industry on or before January 1, ~~2006,~~2008, this Article is repealed effective for business activities that occur on or after January 1, 2010."

SECTION 2.2. This part is effective when it becomes law.

PART III. SALES TAX REFUND CHANGES

SECTION 3.1. G.S. 105-164.14(j) reads as rewritten:

"(j) Certain Industrial Facilities. – The owner of an eligible facility is allowed an annual refund of sales and use taxes as provided in this subsection.

(1) Refund. – The owner of an eligible facility is allowed an annual refund of sales and use taxes paid by it under this Article on qualified building materials, building supplies, fixtures, and equipment that become a part of the real property of the eligible facility. Liability incurred indirectly by the owner for sales and use taxes on these items is considered tax paid by the owner. Building materials, building supplies, fixtures, and equipment are qualified if they are installed in the construction of the facility. Purchases for subsequent repair, renovation, or equipment replacement are not qualified.

A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the State's fiscal year. Refunds applied for after the due date are barred.

(2) Eligibility. – A facility is eligible under this subsection if it meets ~~both~~ all of the following conditions:

a. It is primarily engaged in one of the industries listed in this subsection.

b. The Secretary of Commerce has certified that the owner of the facility will invest at least the required amount of private funds to construct the facility in this State. For the purpose of this subsection, costs of construction may include costs of acquiring and improving land for the facility and costs of equipment for the facility. If the facility is located in an enterprise tier one, two, or three area as defined in G.S. 105-129.3, the required amount is fifty million dollars ($50,000,000). For all other facilities, the required amount is one hundred million dollars ($100,000,000). In the case of a computer manufacturing facility, the owner may invest these funds either directly or indirectly through a related entity or strategic partner as those terms are defined in G.S. 105-129.61. ~~In the case of a computer manufacturing facility,~~ For the purpose of this subsection, the term 'facility' has the same meaning as under G.S. 105-129.61.

c. If the facility is primarily engaged in financial services, securities operations, and related systems development, it satisfies all of the following conditions:
1. It is owned and operated by the business for which the services are provided or by a related entity of that business as defined in G.S. 105-130.7A.
2. No part of it is leased to a third-party tenant that is not a related entity of the business.

(3) Industries. – This subsection applies to the following industries:
a. Air courier services. Air courier services has the same meaning as in G.S. 105-129.2.
b. Aircraft manufacturing. Aircraft manufacturing means manufacturing or assembling complete aircraft.
c. Bioprocessing. Bioprocessing means biomanufacturing or processing that includes the culture of cells to make commercial products, the purification of biomolecules from cells, or the use of these molecules in manufacturing.
d. Computer manufacturing. Computer manufacturing means manufacturing or assembling electronic computers, such as personal computers, workstations, laptops, and computer servers. The term includes the assembly or integration of processors, coprocessors, memory, storage, and input/output devices into a user-programmable final product. The term includes manufacturing or assembling computer peripheral equipment, such as storage devices, printers, monitors, input/output devices, and terminals only if the manufacture or assembly of this peripheral equipment occurs at a facility or campus at which the taxpayer also manufactures or assembles electronic computers.
e. Reserved for future codification purposes.
f. Financial services, securities operations, and related systems development. Financial services, securities operations, and related systems development means one or both of the following functions:
1. Performing analysis, operations, trading, or sales functions for investment banking, securities dealing and brokering, securities trading and underwriting, investment portfolio/mutual fund management, retirement services, or employee benefit administration.
2. Developing information technology systems and applications, managing and enhancing operating applications and databases, or providing, operating, and maintaining telecommunications networks and distributed and mainframe computing resources for

investment banking, securities dealing and brokering, securities trading and underwriting, investment portfolio/mutual fund management, retirement services, or employee benefit administration.

g. Motor vehicle manufacturing. Motor vehicle manufacturing means any of the following:
   1. Manufacturing complete automobiles and light-duty motor vehicles.
   2. Manufacturing heavy-duty truck chassis and assembling complete heavy-duty trucks, buses, heavy-duty motor homes, and other special purpose heavy-duty motor vehicles for highway use.
   3. Manufacturing complete military armored vehicles, nonarmored military universal carriers, combat tanks, and specialized components for combat tanks.

h. Reserved for future codification purposes.

i. Reserved for future codification purposes.

j. Pharmaceutical and medicine manufacturing and distribution of pharmaceuticals and medicines. Pharmaceutical and medicine manufacturing means any of the following:
   1. Manufacturing biological and medicinal products. For the purpose of this sub-subdivision, a biological product is a preparation that is synthesized from living organisms or their products and used medically as a diagnostic, preventive, or therapeutic agent. For the purpose of this sub-subdivision, bacteria, viruses, and their parts are considered living organisms.
   2. Processing botanical drugs and herbs by grading, grinding, and milling.
   3. Isolating active medicinal principals from botanical drugs and herbs.
   4. Manufacturing pharmaceutical products intended for internal and external consumption in forms such as ampoules, tablets, capsules, vials, ointments, powders, solutions, and suspensions.

k. Reserved for future codification purposes.

l. Reserved for future codification purposes.

m. Semiconductor manufacturing. Semiconductor manufacturing means development and production of semiconductor material, devices, or components.

(4) Forfeiture. – If the owner of an eligible facility does not make the required minimum investment within five years after the first refund under this subsection with respect to the facility, the facility loses its eligibility and the owner forfeits all refunds already received under this

subsection. Upon forfeiture, the owner is liable for tax under this Article equal to the amount of all past taxes refunded under this subsection, plus interest at the rate established in G.S. 105-241.1(i), computed from the date each refund was issued. The tax and interest are due 30 days after the date of the forfeiture. A person that fails to pay the tax and interest is subject to the penalties provided in G.S. 105-236.

(5) Sunset. This subsection is repealed for sales made on or after January 1, ~~2010.~~2013."

SECTION 3.2. The changes made to G.S. 105-164.14(j)(2)b. by Section 3.1 of this act become effective January 1, 2005, and apply to sales made on or after that date. The remainder of this part becomes effective July 1, 2006, and applies to purchases made on or after that date.

PART IV. EFFECTIVE DATE

SECTION 4. Except as otherwise provided, this act is effective when it becomes law.

HOUSE BILL 2744:
Economic Development Program Modifications

BILL ANALYSIS

Committee:	House Finance	**Date:**	July 17, 2006
Introduced by:	Reps. Owens, Daughtridge	**Summary by:**	Canaan Huie
Version:	Fifth Edition		Committee Counsel

SUMMARY: This bill would make numerous changes to the JDIG Program, the Bill Lee Act, and certain sales and use tax refunds. Most provisions of the bill would be effective when they became law.

The bill is back in the House for concurrence because of the addition of Part IV of the bill. Part IV of the bill makes several technical changes to the Internet data center facilities sales tax exemption that was enacted as part of the 2006 Appropriations Act (SB 1741, S.L. 2006-66). There are no substantive differences between the 5th Edition of the bill and the 4th Edition, which is the version that passed the House.

CURRENT LAW: The Job Development Investment Grant (JDIG) Program was created in 2002 as a new economic development tool for new and expanding businesses in North Carolina. JDIG is used to attract businesses to the State by allowing a five-member committee to award grants to businesses. The amounts of the grants are based on income tax withholdings from new jobs created by the businesses.

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, and for worker training. In 2000, the General Assembly extended the sunset on the Act until January 1, 2006. During the 2005 Regular Session, the General Assembly further extended the Act until January 1, 2008. There are several exceptions to the 2006 sunset date, one of which involves eligible major industries. Eligible major industries that qualify as such before January 1, 2006, are 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, or semiconductor manufacturing.

The definition of eligible major industries for the purposes of the Bill Lee Act largely conforms to the list of taxpayers who are eligible for a refund on the sales and use taxes paid by the taxpayer on building materials for construction of a new facility in this State. Taxpayers that are eligible for the refund of sales and use taxes are not required to qualify as such by a specific date, but the refund provision does expire for purchases made on or after January 1, 2010.

BILL ANALYSIS:

Part I. JDIG Changes. This bill makes numerous changes to the JDIG program. Some of these changes significantly expand or extend the program, whereas others of these changes make changes intended to streamline the administration of the program, clarify certain aspects of the program, or reduce penalties for failure to comply with agreements under the program.

There are two changes in the bill that could significantly add to the costs of the program over the next 12-13 years. First, in section 1.2, this bill increases the maximum amount of total annual liability for

agreements entered into during the 2006 calendar year from $15 million to $30 million. This change is effective for agreements entered into during 2006 only; for agreements entered into in later years, the maximum amount of the total annual liability would return to $15 million. Under the JDIG program, agreements entered into in one calendar year may result in annual grant payments for the succeeding 12 years. Therefore, an increase in the maximum amount of the total annual liability of $15 million for one year could have a fiscal impact of up to $180 million over a 12-year period. Second, in Section 1.11, the bill extends the sunset on the JDIG program by an additional two years, through the end of the 2009 calendar year. As with the increase discussed above, this two-year extension of the program could have a significant fiscal impact stretching out for a dozen years or more.

In addition, this bill would make significant changes to the clawback provisions under the JDIG program. Under the JDIG program, the Economic Investment Committee (EIC), the entity that administers the JDIG program, is required to amend or terminate the agreement and to recapture all or part of a grant made in previous years under certain circumstances. If the business fails to comply with any term of the agreement or with criteria developed by the EIC, the EIC must amend the agreement and may terminate the agreement. This amendment may take the form of a lower percentage being used to determine the amount of the grant or of a shorter term for the agreement. The reduction must be proportional to the failure to comply with the agreement. If the business fails to comply with any term of the agreement or with criteria developed by the EIC for two consecutive years, the EIC must terminate the agreement. In addition, in each agreement the EIC must include a provision describing the conditions that will lead to recapture of a grant made in an earlier year.

Under this bill, the provisions relating to failure to comply with the agreement for two consecutive years would be amended so that termination of the agreement would not be required in all cases. Under this bill, if the business were still in the base period established by the EIC, the EIC would withhold the grant for any consecutive year remaining in the base period in which the business fails to comply with the agreement. The EIC would also have the option of extending the base period by up to 24 months over the amount specified in the original agreement in these cases. If the business did not come into compliance by the end of the base period, the agreement would be terminated. If the business were no longer in the base period established by the EIC, the EIC would be required to terminate the agreement. The effect of these changes would be to allow a company more leeway in meeting the terms of an agreement in the early years of the agreement.

This bill would also expand the types of entities that are eligible to enter into agreements under the program. When the JDIG program was originally created, all but two specific industries were eligible for grants under the program. Those two industries were retail operations and professional and semiprofessional sports teams and clubs. The exclusion of professional sports was put into place, in part, due to concerns that the intent behind the program was to attract one or more major league sports teams to the State. This bill would provide an exception to that exclusion in that professional motorsports racing teams would become eligible for grants under the program.

The bill also makes the following changes:

- Changes references to "base years" to "base period" and allows the EIC to set the base period. Under current law, the base years are the first two years, unless the EIC decides on a different period. This clarifies that the EIC has authority to set that base period. The base period could not contain more than 5 years in which grant payments were to be made.
- Changes the definition of "new employee." Under current law, a "new employee" may include an employee that was originally hired in the base period, was subsequently laid off,

and then was subsequently rehired by the company during the term of the agreement. This change would exclude these rehires from the definition of new employee.

- Clarifies that the $6,500 cap per new employee and the 75% cap on the amount of a grant apply to the total amounts and not just the amount that flows to the business. This is important because the amount of a grant is reduced by 25% for a position located in enterprise tier four or five with that portion instead being directed to the Utility Account of the Industrial Development Fund. This clarifies that the two caps apply to both the amount that flows to the business and the amount that flows to the Utility Account.
- Clarifies that social security numbers related to the positions on which a grant is based must be included with annual reports to the EIC. The change further clarifies that the social security numbers and State and federal tax returns are tax information, which is protected from disclosure under general laws related to public records.
- Removes the State Controller from the disbursement process. In 2004, a JDIG Reserve was created within the Department of Commerce. Due to the manner in which that Reserve was established, the State Controller is not directly involved with disbursements to businesses from the JDIG Reserve. This bill would relieve the State Controller of certain duties related to certification of grant amounts and remittance of payments to grantees and would transfer those duties to the Department of Commerce.
- Clarifies that the tier designation that determines whether a grant payment is subject to reduction is the designation that is in effect in the year in which the application is filed. Under current law, the amount of a grant is reduced by 25% if the position with respect to which the grant is awarded is located in an enterprise tier four or five area. Under the current law it is not clear when that determination is made – at the time the business applies for a grant, at the time a grant agreement is entered into, or at the time the grant payment is made.

Part II. Bill Lee Act Changes. Part II of this bill would extend the time period in which eligible major industries could qualify as such in order to qualify for the extension of the Bill Lee Act by two years. This provision would allow for an extension of the Bill Lee Act to the taxpayers that qualified as eligible major industries by January 1, 2008, rather than 2006.

Part III. Sales Tax Refund Changes. Part III of this bill would add financial services, securities operations, and related systems development as an industry that is eligible for the sales and use tax refund related to certain building materials. In addition, this part would extend the sunset on the sales and use tax refund for all eligible industries by three years, until January 1, 2013. The effect of this change would also be to make these types of taxpayers eligible for the extension of the Bill Lee Act discussed above.

Part IV. Internet Data Center Tax Exemption Changes. Part IV of this bill would make changes to the sales and use tax exemption for Internet data center facilities enacted as part of the 2006 Appropriations Act (S 1741, S.L. 2006). All of the changes are technical in nature and were requested by the industry whose recruitment was the catalyst for the exemption.

H2744e4-SMLY

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

REVISED

BILL NUMBER: House Bill 2744 (Fourth Edition)

SHORT TITLE: Economic Development Program Modifications.

SPONSOR(S): Representatives Owens and Daughtridge

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES:					
State General Fund (Bill Lee, Sales Tax Refund)	**(See "Assumptions and Methodology")**				
EXPENDITURES:					
JDIG Program	**(See Attachment)**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Commerce.

EFFECTIVE DATE: When the bill becomes law.

CURRENT LAW: The Job Development Investment Grant (JDIG) Program was created in 2002 as a new economic development tool for new and expanding businesses in North Carolina. JDIG is used to attract businesses to the State by allowing a five-member committee to award grants to businesses. The amounts of the grants are based on income tax withholdings from new jobs created by the businesses.

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, and for worker training. In 2000, the General Assembly extended the sunset on the Act until January 1, 2006. During the 2005 Regular Session, the General Assembly further extended the Act until January 1, 2008. There are several exceptions to the 2006 sunset date, one of which involves eligible major industries. Eligible major industries that qualify as such before January 1, 2006, are 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, or semiconductor manufacturing.

The definition of eligible major industries for the purposes of the Bill Lee Act largely conforms to the list of taxpayers who are eligible for a refund on the sales and use taxes paid by the taxpayer on building materials for construction of a new facility in this State. Taxpayers that are eligible for the refund of sales and use taxes are not required to qualify as such by a specific date, but the refund provision expires for purchases made on or after January 1, 2010.

BILL SUMMARY: This bill would make numerous changes to the JDIG Program, the Bill Lee Act, and certain sales and use tax refunds. Most of the provisions of the bill would be effective when they became law.

Part I. JDIG Changes. This bill makes numerous changes to the JDIG program. Some of these changes significantly expand or extend the program, whereas others of these changes make changes intended to streamline the administration of the program, clarify certain aspects of the program, or reduce penalties for failure to comply with agreements under the program.

Section 1.2, of the bill increases the maximum amount of total annual liability for agreements entered into during the 2006 calendar year (grant year) from $15 million to $30 million. This change is effective for agreements entered into during 2006 only; for agreements entered into in later years, the maximum amount of the total annual liability would return to $15 million. Under the JDIG program, agreements entered into in one calendar year may result in annual grant payments for the succeeding 12 years.

Section 1.11, of the bill extends the sunset on the JDIG program by an additional two years, through the end of the 2009 calendar year, potentially resulting in payments through the year 2020.

Part II. Bill Lee Act Changes. The Bill Lee Act generally sunsets January 1, 2008. However, a taxpayer who qualifies as an eligible "major industry" on or before January 1, 2006 would have a January 1, 2010 sunset. The bill moves the January 1, 2006 eligibility deadline to January 1, 2008.

Part III. Sales Tax Refund Changes. Adds "financial services and securities operations and systems development" to the list of industries eligible for the refund. In addition, January 1, 2010 sunset on the refunds is extended to January 1, 2013.

ASSUMPTIONS AND METHODOLOGY:

Part I. JDIG Changes. This analysis addresses fiscal impact as a result of the proposed changes to the program in House Bill 2744 and does not address costs associated with the current legislation for the program.

The bill increases the maximum annual total liability cap from $15 million to $30 million for the 2006 calendar year, and extends the sunset requirement by two years (from 2008 to 2010). Current legislation stipulates grant terms shall not exceed 12 years starting with the first year a grant

payment is made. *This analysis assumes that the first payment is made during the first year of the award, and that the maximum allowable amount will be awarded in each grant year.*

Increase Maximum Annual Liability for the 2006 Calendar Year:

Increasing the maximum annual liability amount for the 2006 grant year could potentially result in an additional $15 million dollar obligation from the state for awards for that year and the following 12 years (based on the existing legislation for grant terms). Assuming that the Department would award the maximum amount allowed for new agreements during 2006, the total fiscal impact associated with the maximum cap increase would potentially equal $180 million (12 years x $15,000,000). It should be noted that this is not the total cost for *all* grants awarded under the JDIG program, only the additional grants awarded due to increasing the annual cap for one calendar year. (See Attachment)

Extend the Sunset from January 1, 2008 to January 1, 2010:

Extending the sunset date for the program will allow for new grants to be awarded for an additional two years. The bill allows for new grants be awarded up to a maximum amount of $15 million for 2008 (potentially paid through 12 years or 2020); and for an additional $15 million to be awarded for up to 12 years beginning in 2009 (ending in 2021). The cumulative impact of allowing the award of new grants for two additional years would potentially equal $390 million (assuming maximum payout over the allowable 12 grant years). (See Attachment)

Total Fiscal Impact Estimate of JDIG Portion of HB 2744:

Proposed Legislative Change:	General Fund Cost Estimate:
Increase the Maximum Cap to $30 million for 2006	($180,000,000)
Extend Sunset for Two Years	($390,000,000)
Total Projected Cost of Proposed JDIG Changes	**($570,000,000)***

*Note: This analysis does not include any projections regarding potential increases to General Fund Revenue directly associated with the award of JDIG Grants.

Part II. Bill Lee Act Changes. The practical effect of this provision is to extend from January 1, 2006 to January 1, 2008 the window of time for eligible companies to qualify for later sunset in the Bill Lee Act (2010 instead of 2008) applying to major industry tax incentives. This time extension for qualification might allow a company being recruited to take advantage of the longer sunset. At this time the Department of Commerce is not aware of any companies who will be able to use this provision. In any case, the provision would have no immediate impact but could affect 2009-10 and 2010-11 fiscal year revenues to the extent that additional taxpayers qualify.

Part III. Sales Tax Refund Changes. The Department of Commerce requested the extension of sales tax refund eligibility to financial service and securities facilities in order to have the potential

to recruit companies contemplating a move from a money center to North Carolina. At this time the Department is not aware of any major companies who will be able to take advantage of this change. The other change in the bill extends the sunset on refunds from 2010 to 2013. The Department of Revenue's October 2005 report on state tax expenditures does not list the historical revenue loss from this item. One reason might be that the original 2003 special session legislation creating the refund was adopted for the purpose of attracting a single major taxpayer to the state. Thus, the reporting of this item could lead to a confidentiality issue. For information purposes, the original 2003 session fiscal note indicated a potential 2007-08 cost of $2.6 million, primarily from one client the Department of Commerce was attempting to attract.

TECHNICAL CONSIDERATIONS:

Total projected costs are based on an assumption that increasing the annual cap by$15 million for one year obligates the state to pay *up to $15 million per year* for those new agreements for a maximum of 12 years. The fact that the annual total liability returns to the current cap of $15 million effective January 1, 2007 will not impact the requirement that the state continue to pay for the new agreements entered into during 2006 for up to 12 years. If the Department does not award the maximum amount of $30,000,000 for 2006 the cumulative impact would be less than the amounts indicated in this analysis.

Any projected increases in revenue generated by the award of JDIG grants have not been included in this analysis. The analysis covers only the projected costs associated with the program. Section1.13 of the bill does require the Department of Commerce to conduct a study of the program by February 1, 2007.

SOURCES OF DATA: Department of Commerce

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Susan Morgan
David Crotts

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

Official Fiscal Research Division Publication

DATE: July17, 2006

Signed Copy Located in the NCGA Principal Clerk's Offices

Fiscal Analysis HB 2744 - Potential Impact of Changes to the Job Development Investment Grant (JDIG) Program

Section 1.2 - Increase the Annual Maximum Cap from$15,000,000 to$30,000,000 for Calendar Year 2006
Section 1.11 Extend the Sunset Date 2 Years (From January 1, 2008, To January 1, 2010)

Section 1.2 - Increase Maximum Cap to$30,000,000 for 2006 (Increase of$15,000,000 per year for 12 years)*

Grant Year	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Additional Annual Amount	$ (15,000,000)	$ (15,000,000)	$ (15,000,000)	$ (15,000,000)	$ (15,000,000)	$ (15,000,000)	$ (15,000,000)	$ (15,000,000)	$ (15,000,000)	$ (15,000,000)	$ (15,000,000)	$ (15,000,000)
Cumulative Amount	$ (15,000,000)	$ (30,000,000)	$ (45,000,000)	$ (60,000,000)	$ (75,000,000)	$ (90,000,000)	$ (105,000,000)	$ (120,000,000)	$ (135,000,000)	$ (150,000,000)	$ (165,000,000)	$ (180,000,000)

* Assumes the additional maximum amount of$15,000,000 will be awarded in 2006 and that the first payments will begin in 2006.

Section 1.11 - Extend the Sunset Date by Two Years**

Grant Year	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Maximum Annual Amount	$ (15,000,000)	$ (30,000,000)	$ (30,000,000)	$ (30,000,000)	$ (30,000,000)	$ (30,000,000)	$ (30,000,000)	$ (30,000,000)	$ (30,000,000)	$ (30,000,000)	$ (30,000,000)	$ (30,000,000)	$ (30,000,000)	$ (15,000,000)
Cumulative Amount	$ (15,000,000)	$ (45,000,000)	$ (75,000,000)	$ (105,000,000)	$ (135,000,000)	$ (165,000,000)	$ (195,000,000)	$ (225,000,000)	$ (255,000,000)	$ (285,000,000)	$ (315,000,000)	$ (345,000,000)	$ (375,000,000)	$ (390,000,000)

** Estimate based on existing maximum cap of$15,000,000 allowing for payments to be made up to 12 years following the first year of payment; assuming first payment is made in the first year of the award notification.

Total Estimated Impact of HB 2744 $ (570,000,000)

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Alexander, Gibson, Howard, Luebke, McComas, Wainwright (Chairs) for the Committee on FINANCE.

☒Committee Substitute # 2 for

HB 2744 A BILL TO BE ENTITLED AN ACT TO MAKE MODIFICATIONS TO THE JOB DEVELOPMENT INVESTMENT GRANT PROGRAM, TO EXTEND THE WILLIAM S. LEE QUALITY JOBS AND BUSINESS EXPANSION ACT FOR CERTAIN TAXPAYERS, AND TO ENHANCE CERTAIN SALES AND USE TAX BENEFITS.

☒ With recommendation that the House concur.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 1267

Short Title:	Exclude Pensions from Income Tax.	(Public)
Sponsors:	Representatives Underhill; and Faison.	
Referred to:	Finance.	

April 18, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE EQUAL INCOME TAX TREATMENT OF GOVERNMENT RETIREES' BENEFITS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-134.6(b) reads as rewritten:

"(b) Deductions. – The following deductions from taxable income shall be made in calculating North Carolina taxable income, to the extent each item is included in taxable income:

...

(6) ~~a. An amount, not to exceed four thousand dollars ($4,000), equal to the sum of the amount calculated in subparagraph b. plus the amount calculated in subparagraph c.~~

~~b. The amount calculated in this subparagraph is the amount received during the taxable year from one or more state, local, or federal government retirement plans.~~

~~c. The amount calculated in this subparagraph is the~~ The amount received during the taxable year from one or more retirement plans other than state, local, or federal government retirement plans, not to exceed a total of two thousand dollars ($2,000) in any taxable ~~year.~~

~~d. In~~year. In the case of a married couple filing a joint ~~return where~~return, if both spouses received retirement benefits during the taxable year, the maximum dollar ~~amounts provided in this subdivision for various types of retirement benefits apply~~amount applies separately to each spouse's benefits.

(6a) The amount received during the taxable year under North Carolina State and local government retirement plans and under federal government retirement plans.

(6b) The greater of the following:

a. The amount received during the taxable year under a state or local government retirement plan of a state other than North Carolina, to the extent that other state would not subject to individual income tax the equivalent amount received under a North Carolina State or local government retirement plan.

b. Up to four thousand dollars ($4,000) received during the taxable year under a state or local government retirement plan of a state other than North Carolina. In the case of a married couple filing a joint return, if both spouses received benefits from a retirement plan during the taxable year, the maximum dollar amount applies separately to each spouse's benefits."

SECTION 2. G.S. 105-134.1(13) reads as rewritten:

"(13) Retirement ~~benefits. Amounts paid to a former employee or the beneficiary of a former employee under a~~plan. – A written retirement plan established by the employer to provide payments to an employee or the beneficiary of an employee after the end of the employee's employment with the employer where the right to receive the payments is based upon the employment relationship. With respect to a self-employed individual or the beneficiary of a self-employed individual, the term means ~~amounts paid to the individual or beneficiary of the individual under~~ a written retirement plan established by the individual to provide payments to the individual or the beneficiary of the individual after the end of the self-employment. In addition, the term includes ~~amounts received from an individual retirement account described in section 408 of the Code or from an individual retirement annuity described in section 408 of~~ an individual retirement plan as defined in the Code and any plan treated as an individual retirement plan under the Code. For the purpose of this subdivision, the term "employee" includes a volunteer worker."

SECTION 3. This act is effective for taxable years beginning on or after January 1, 2005.

HOUSE BILL 1267:
Exclude Pensions from Income Tax

BILL ANALYSIS

Committee:	House Finance	**Date:**	July 16, 2006
Introduced by:	Rep. Underhill	**Summary by:**	Martha Walston
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 1267 amends the statute allowing a deduction of retirement income from taxable income as follows:

- Allows a full State income tax exemption on government pension income of North Carolina State and local retirees and federal retirees, regardless of when they vested[1].
- Allows a State income tax exemption on government pension income of other states' state and local retirees, to the extent their home state would exempt North Carolina government pension income, but not less than $4,000

CURRENT LAW: North Carolina allows a retiree to exclude up to a $4,000 from taxable income received from a North Carolina, other state government, or federal retirement plan. North Carolina State and local retirees who vested in the State and local retirement system on or before August, 1989, are entitled to a full income tax exemption of their government retirement income.[2] This same exemption is granted to similarly situated federal retirees, since the 1989 U.S. Supreme Court case, *Michigan v. Davis* requires that states treat federal retirees the same as their own state retirees, based on the doctrine of intergovernmental tax immunities.

North Carolina allows a $2,000 exclusion for private retirement benefits. The total combined exclusion cannot exceed $4,000, unless a person complies with the vested requirements of the *Bailey* case.

BILL ANALYSIS: House Bill 1267 would allow all federal and North Carolina State and local government retirees a full exclusion of retirement income regardless of when they vested. For retirees from other states, the exclusion would be limited to the amount the other state allows retirees of North Carolina State government or local government, but not less than $4,000.

EFFECTIVE DATE: The act is effective for taxable years beginning on or after January 1, 2005.

BACKGROUND: Before 1989, all North Carolina State and local retirees had a 100% income tax exemption of their government retirement income. Retirees from other states' governments received this exemption, but only to the extent their state would grant an exemption to a North Carolina government retiree. Thus, if a retiree came to North Carolina from a state that allowed 100% exemption for pensions of other state's government retirees, that retiree would get a 100% exemption in North Carolina. If a retiree came from a state that did not grant an exemption for other states' government retirees, then that retiree would not get an exemption in North Carolina. If a retiree came from a state that allowed partial exemption for pensions of retirees of other states, then that retiree would get a partial exemption in North Carolina.

---

[1] An employee is vested if he or she has five years of creditable service.

[2] In 1989, the North Carolina Supreme Court in *Bailey v. State* allowed this full exemption for vested North Carolina retirees on the basis of an alleged contract between the State and its vested employees. Employees from other states have no such contract with North Carolina, so they are not affected by the *Bailey* decision.

In 1989, two things happened that resulted in the same tax treatment for all government retirees: a $4,000 North Carolina income tax exemption of the income received from a government retirement plan. This $4,000 exemption continues to apply to all retirees from other states' governments.

First the General Assembly modernized the State's individual income tax law by conforming it to the federal income tax law. Effective in 1989, a taxpayer's North Carolina taxable income is based upon the individual's federal taxable income. When the General Assembly revised its individual income tax law, it repealed many of the State's separate income tax exemptions and deductions, including exempting pension benefits from retirement systems of other states to the extent that state granted a similar exemption to North Carolina retirees.

Also in 1989, the U.S. Supreme Court ruled in *Michigan v. Davis* that states must treat federal retirees the same as their own state retirees, based on the doctrine of intergovernmental tax immunities. To comply with this court ruling, North Carolina granted a $4,000 income tax exemption to all government retirees. Retirees of North Carolina State government, who received a 100% income tax exemption on their pension income prior to this decision, filed a lawsuit against the State alleging a breach of contract. This is known as the *Bailey* case.

The Court rendered a decision in the *Bailey* case in May of 1998. It ruled that North Carolina State and local retirees who vested in the State and local retirement system on or before August, 1989, are entitled to a full income tax exemption of their government retirement income. It indirectly granted this same exemption to similarly situated federal retirees since a state must treat federal retirees in the same manner as State retirees. All other government retirees, such as those North Carolina and federal retirees who were not vested as of August, 1989, and all retirees from other states, are not affected by the *Bailey* case.

The *Bailey* court allowed the full income tax exemption for vested North Carolina retirees on the basis of an alleged contract between the State and its vested employees. Employees from other states have no such contract with North Carolina. The exemption for vested federal retirees that results from *Bailey* is based on federal constitutional and statutory law that requires states to treat federal retirees the same as their own state retirees. This law, the doctrine of intergovernmental tax immunities, does not require states to treat retirees from all states alike. Therefore, there is no legal requirement to extend the complete State income tax exemption to nonvested North Carolina and federal retirees or to retirees from other states.

H1267e1-SMLA

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 1267 (First Edition)

SHORT TITLE: Exclude Pensions from Income Tax.

SPONSOR(S): Representative Underhill

FISCAL IMPACT ($Mill.)

Yes (x) **No ( )** **No Estimate Available ( )**

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
REVENUES:					
State General Fund	-24.4	-24.5	-34.1	-47.4	-66.3
EXPENDITURES:					
POSITIONS (cumulative):					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: The income tax is administered by the Department of Revenue. The enactment of the bill is not expected to affect the budget requirements of the Department.

EFFECTIVE DATE: Tax years beginning on or after January 1, 2005.

BILL SUMMARY: Under the **Bailey** decision, public sector retirees who have five years of creditable service as of August 12, 1989, are entitled to an income tax exclusion for 100% of their retirement pay. The remaining "nonvested" public sector retirees as of that date and taxpayers receiving a pension from a state or local unit in another state are eligible for a $4,000 exclusion. The bill provides that all federal, state, and local retirees would receive the full exclusion regardless of their vesting status or their state of employment. For state and local government retirees from other states, the exemption would be limited to the amount the other state allows to retirees of the North Carolina or its political subdivisions, but not lower than $4,000.

ASSUMPTIONS AND METHODOLOGY: "Nonvested" Public Sector Retirees: The Department of State Treasurer provided Fiscal Research with a tabulation of retiree benefits for "nonvested" state and local retirees. This table showed the number of retirees by size of retirement check for April 2005 for the state, local, judicial, and legislative retirement systems. The numbers for each system were then added to get an overall total.

The next step was to calculate the tax savings for the average retiree in each statistical reporting class. This determination was made by subtracting the current $4,000 exclusion allowed under current law from the average annual pension for each class and then multiplying the result by an assumed marginal tax rate (6%, 7%, or 7 ¾%). The "per retiree" tax saving was then multiplied by the number of retirees for that income class to determine the annual revenue loss for the income grouping. The total loss for each income class was then added to the amount for each of the other classes to determine the total statewide impact.

There was no comparable distribution data for federal civil service and military retirees. To make an estimate for these classes, we took the total number of federal pensioners, relative to the number of state and local retirees, used in the 2001 analysis of a similar bill (federal number was 5.6% higher) and the average check size (federal is 35% more than state and local) and arrayed this total into various check size amounts. The tax savings were then tabulated using the same methodology as that used for state and local retirees.

To estimate the future year cost of the permanent impact portion of the estimate, an annual growth rate of 40% was used. This rate is based on the actual experience between February 1999, and April 2005. The rate is high due to a combination of: (1) the exponential growth in the number of August 12, 1989 nonvested retirees, (2) the recent tendency for employees to work for the state just long enough to obtain health insurance coverage, and (3) the annual increase in pension benefits.

The analysis indicates that there are about 11,420 state and local retirees who would receive relief under the bill. The estimated number of impacted federal retirees is 12,066. These numbers represent only 51% of the August 12, 1989 nonvested retirees because many receive a pension that is lower than the $4,000 exclusion and thus do not currently pay tax on their benefits.

The impact for the 2005-06 fiscal year is more than 100% of the annual tax year impact because the January 1, 2005 effective date of the bill means that during the 2005-06 fiscal year taxpayers affected by the bill will receive 100% relief for the 2005 tax year plus partial relief for the 2006 tax year (reduced withholding or estimated payments)

Retirees of Other States: There is no data in North Carolina on the number of retirees from state and local units of other states or the amount of exclusion allowed in the other states for retirees of the North Carolina system. For the purpose of this analysis, it is assumed that the impact for this category for the 2005 tax year is 10% of the amount for state and local retirees in North Carolina. For future years, this first year amount was assumed to grow 5% per year.

SOURCES OF DATA:

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: David Crotts

APPROVED BY: James D. Johnson, Director
Fiscal Research Division

DATE: June 3, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 2008

Short Title:	Reenact Long-Term Care Insurance Tax Credit.	(Public)
Sponsors:	Representatives Howard, Nye, Wright, England (Primary Sponsors); L. Allen, Almond, Barnhart, Bell, Blackwood, Clary, Cleveland, Current, Daughtridge, Dollar, Faison, Folwell, Frye, Gillespie, Glazier, Grady, Harrison, Hilton, Hollo, Holloway, Johnson, Justice, Justus, Langdon, LaRoque, Lewis, McGee, Moore, Pate, Preston, Ray, Setzer, Sherrill, Stam, Steen, Stiller, Underhill, Wainwright, Walend, West, and Wiley.	
Referred to:	Finance.	

May 16, 2006

A BILL TO BE ENTITLED

AN ACT TO REENACT THE LONG-TERM CARE INSURANCE TAX CREDIT, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON HEALTH CARE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-151.28 is reenacted.

SECTION 2. G.S. 105-160.3(b)(7) is reenacted.

SECTION 3. This act is effective for taxable years beginning on or after January 1, 2006.

HOUSE BILL 2008:
Reenact Long-Term Care Insurance Tax Credit

BILL ANALYSIS

Committee:	House Finance	**Date:**	July 16, 2006
Introduced by:	Reps. Howard, Nye, Wright, England	**Summary by:**	Martha Walston Committee Counsel
Version:	First Edition		

SUMMARY: House Bill 2008 reinstates the long-term care insurance tax credit for taxable years beginning on or after January 1, 2006. (This credit expired for tax years beginning on or after January 1, 2004).

House Bill 2008 is identical to House Bill 2095, which is also in House Finance.

CURRENT LAW: The long-term care credit became effective for tax years beginning on or after January 1, 1999, and expired for tax years beginning on or after January 1, 2004. This State individual income tax credit was allowed for premiums paid on qualifying long-term care insurance contracts that provide insurance coverage for a taxpayer or a taxpayer's spouse, or a dependent for whom the taxpayer provides over half of the support and whose income is below an exemption amount.

Amount of Credit: The credit was 15% of the premiums paid, not to exceed $350 for each qualified long-term care insurance contract for which a credit was claimed.

Purpose of Sunset: The purpose of the sunset was to determine whether the credit actually affected taxpayers' behavior – causing them to purchase insurance when they would not otherwise do so – or if the credit merely spent State revenues without increasing the purchase of long-term care insurance.

BILL ANALYSIS: House Bill 2008 would reinstate the long-term care insurance for taxable years beginning on or after January 1, 2006.

Definition of long-term care insurance contract: A long-term care insurance contract is defined in section 7702B of the Internal Revenue Code as any insurance contract under which the only insurance protection provided is for coverage of qualified long-term care services. Qualified long-term care services are those services required by a chronically ill individual and provided under a plan of care prescribed by a licensed health care practitioner. The long-term care insurance contract must also meet the following requirements:

1. Is guaranteed renewable.
2. Does not provide for a cash surrender value.
3. Provides that refunds and dividends may be used only to reduce future premiums or to increase future benefit.
4. Does not pay or reimburse expenses that are reimbursable under Medicare.
5. Satisfies consumer protection laws.

Federal Law: Under federal law, premiums paid on long-term care insurance contracts are treated as deductible medical expenses. Under the medical expense itemized deduction, unreimbursed medical expenses may be deducted to the extent that the expenses exceed 7.5% of adjusted gross income. To the extent a taxpayer will receive a deduction for long-term care insurance premiums under the Code, the taxpayer will receive a deduction for State income tax purposes as well since North Carolina uses federal taxable income as the starting point for calculating State taxable income. To prevent a double tax benefit in those cases, the credit is limited to those expenses for which a deduction has not been claimed.

BACKGROUND: In January 2003, the Department of Revenue reported to the Revenue Laws Study Committee that they had reviewed a sample of tax returns claiming the credit and found that in most cases, the taxpayers claiming the credit were not entitled to the credit because they had not purchased long-term care insurance. The Department provided more explicit tax instructions for the following tax year and worked with software vendors to improve the long-term care tax credit information in their programs. As a result of the Department's actions, a lower percentage of ineligible taxpayers claimed the credit that year.

The following states allow an income tax credit for the payment of long-term care insurance premiums: Colorado, Louisiana, Maryland, Minnesota, Montana, New York, North Dakota, and Oregon.

The following states allow an income tax deduction for long-term care insurance premiums: Alabama, Arkansas, California, Hawaii, Idaho, Indiana, Iowa, Kentucky, Maine, Missouri, Montana, New Jersey, New Mexico, Ohio, Oklahoma, Utah, Virginia, West Virginia, and Wisconsin.

H2008e1-SMLA

GENERAL ASSEMBLY OF NORTH CAROLINA
Session 2005

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: July 17, 2006

TO: Representatives Howard, Nye, Wright and England

FROM: Rodney Bizzell
Fiscal Research Division

RE: House Bill 2008 (First Edition)

FISCAL IMPACT ($ in millions)

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES:					
General Fund	**($6.0)**	**($6.0)**	**($6.0)**	**($6.0)**	**($6.0)**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Department of Revenue

EFFECTIVE DATE: Effective for taxable years on or after January 1, 2006.

BILL SUMMARY:
The bill repeals the sunset on the long-term care insurance tax credit beginning January 1, 2006.

BACKGROUND:
The long term care insurance tax credit was one of 13 tax provisions included in the budget act for Fiscal Year 1998-99 by the 1998 General Assembly (1998 S.L. Chapter 212, SB 1366). The state individual income tax credit equals 15% of the premium paid each year on long-term care insurance, but the credit may not exceed $350 for each policy for which the credit is claimed. The credit may not exceed the amount of tax owed by the taxpayer (nonrefundable), and there is no provision to allow unused portions of the credit to be carried forward. The credit became effective for the taxable year beginning on or after January 1, 1999, and expired for taxable years beginning on or after January 1, 2004.

A taxpayer may claim a credit for policies that provide coverage for either the taxpayer, the taxpayer's spouse, or a family member for whom the taxpayer provides over half of the support and whose income is below an exemption amount. A long term-care insurance policy is one that provides only coverage of long-term care services and that meets the following requirements:

1. Is guaranteed renewable.
2. Does not provide for a cash surrender value.
3. Provides that refunds and dividends may be used only to reduce future premiums or to increase future benefit.
4. Does not pay or reimburse expenses that are reimbursable under Medicare.
5. Satisfies consumer protection laws.

Under federal law, premiums paid on long-term care insurance contracts are treated as deductible medical expenses. Under the medical expense itemized deduction, unreimbursed medical expenses may be deducted to the extent that the expenses exceed 7.5% of adjusted gross income. To the extent a taxpayer will receive a deduction for long-term care insurance premiums under the Code, the taxpayer will receive a deduction for State income tax purposes as well, since North Carolina uses federal taxable income as the starting point for calculating State taxable income. To prevent a double tax benefit in those cases, the credit is limited to those expenses for which a deduction has not been claimed.

ASSUMPTIONS AND METHODOLOGY:
Tax year 1999 is the first year that taxpayers could claim the long-term care tax credit. In the inaugural year, 21,029 tax returns claimed approximately $4.2 million in credits for an average long-term care insurance credit of $199.

In January 2003, the Department of Revenue reported to the Revenue Laws Study Committee that they had reviewed a sample of tax returns claiming the credit and found that in most cases, the taxpayers claiming the credit were not entitled to the credit because they had not purchased long-term care insurance. The Department provided more explicit tax instructions for the following tax year and worked with software vendors to improve the long-term care tax credit information in their programs. As a result of the Department's actions, a lower percentage of ineligible taxpayers claimed the credit that year.

High error rates make it difficult to accurately project the cost of reenacting the tax credit. Accurate projections are also hampered by the lack of demographic information on North Carolina long-term care insurance policy holders. A study by the Health Insurance Association of America reports the average purchaser of long-term care insurance is 67 years old. Elderly policy holders with little taxable income would explain why only 51.2% of 86,272 long-term care insurance purchasers in this state claimed a credit in 2002 (counted married filing jointly returns as two policies). Many elderly have little taxable income because North Carolina does not tax Social Security benefits, nor does it tax the pensions of local, state and federal employees vested before August 12, 1989. Furthermore, government pensions not excluded are granted a $4000 income exemption and private pensions are given a $2000 exemption.

This fiscal note assumes that the near term General Fund revenue loss from the long-term care insurance tax credit will be in the $5.5 million to $6 million range based on experience with the

previous credit. While the number of policy holders may increase in the next five years, this estimate assumes no growth in credits claimed due to the likelihood that the new purchases will be made by an elderly population with low state tax liability. The increase in credit claims due to growth in policies may also be countered by a reduction in credits fraudulently claimed.

SOURCES OF DATA: Department of Revenue, Department of Insurance

TECHNICAL CONSIDERATIONS: None

AARP North Carolina

The power to make it better.™

Statement by Richard C. Hatch
Chair, AARP NC Capital Legislative Team

Thank you Mr. Chairman and members of the Committee. I am Dick Hatch, chair of AARP North Carolina's Capital Legislative Team. I am pleased to speak to you on the issue of a tax credit for the purchase of long-term care insurance.

Rarely has legislation had so much support within the legislature and among the public without being enacted into law. Six different House bills were introduced in this legislative session to re-enact the tax credit for long-term care insurance that expired in 2004. Seventy-eight members of the House, including 21 members of this Committee, sponsored at least one of these bills.

In May of this year, AARP North Carolina conducted a statewide poll of citizens aged 50 and over in our state. Nearly six in ten supported a state tax credit for those who purchase long-term care insurance – even if it meant that other taxes would have to increase or services would have to be reduced. In addition to AARP, the legislation is supported by the Governor's Advisory Council on Aging, The Study Commission on Aging, The Senior Tar Heel Legislature, and the NC Coalition on Aging.

In 2004, the last year for which we have data, over 30 states offered a long-term care tax credit or deduction.

The benefits of long-term care insurance extend far beyond the policyholders. The Health Insurance Association of America, in a 2002 study found that long-term care insurance helped in the many ways, I will mention just a few.

Policyholder benefits:

- Disabled older adults were more able to remain in their homes, and delay or avoid using institutional services.
- Disabled older adults with private long-term care insurance received an average of 14 more hours of personal care per week than similarly disabled non-privately insured older adults.
- Long-term care insurance policyholders were 66% less likely to have to spend their assets to pay for nursing home care to the point of impoverishment and Medicaid eligibility.

Medicaid and Medicare benefits:

- Long-term care insurance reduces state and federal Medicaid expenditures and federal Medicare home health expenditures. Medicaid savings were projected to total about $5,000 per policy holder and Medicare savings were estimated to exceed $1,600 per policyholder.

- Aggregate savings to Medicare and Medicaid nationally for the number of policyholders in 2002 was estimated at about $30 billion.

I have heard that some members of the General Assembly oppose renewing this tax credit because they feel it only benefits the wealthy. I don't think that is the case, because the state tax credit is only available to taxpayers who haven't deducted premiums for long-term care insurance on their federal income tax return. My experience tells me that people of moderate and lower incomes usually take the standard deduction on their federal returns and do not itemize. Therefore, they would be the ones who will benefit most from a state tax credit for premiums paid for long-term care insurance.

Thank you Mr. Chairman and Committee members.

AARP North Carolina

The power to make it better.™

Issue Briefing

Tax Credit for Long-Term Care Insurance

Issue: The General Assembly passed legislation in 1998 to allow individuals who purchase a long-term care insurance policy to claim a state income tax credit effective with the tax year that began January 1, 1999. The credit was 15% of the premium paid, not to exceed $350 for each qualified long-term care insurance contract. The legislation had a sunset provision and it expired at the end of the 2003 tax year. Several bills were introduced in the 2005 legislative session to reenact the tax credit.

AARP Position: AARP North Carolina supports reinstituting the state tax credit for long-term care insurance.

What is Long-Term Care Insurance? Long-term care insurance is a specialized insurance designed to pay for long-term care services. Unlike health insurance which pays for care or services that are designed to rehabilitate or correct certain medical problems, long-term care insurance policies are designed to assist a person in maintaining his or her level of functioning. Long-term care services may include, but are not limited to, help with daily activities at home, respite care, home health care, adult day care, and care in a nursing home. Long-term care services can be expensive. For example, the annual cost for nursing home care is now around $52,000 for semi-private room occupancy (Metlife 2002).

Why is Long-Term Care Insurance Needed? Long-term care insurance is needed as a viable option to help people pay for the cost of long-term care services and is an important incentive for helping people to plan for their care in the long term. It should be noted that long-term care insurance is not for everyone. A number of factors including age, health status, overall retirement objectives, and income should be considered in determining whether to purchase a policy. According to the Health Insurance Association of America, North Carolina ranked 15th in 2001 in the number of long-term care insurance policies sold. It is estimated by the National Association of Insurance Commissioners that 86,000 people in North Carolina were covered by long-term care insurance in 2002.

Recent Developments Related to Long-Term Care Insurance: Over the last few years, due in large measure to the increased cost of long-term care services and the increased demand for services, the state and federal government have placed an emphasis on expanding private financing options for long-term care services. In North Carolina, data for SFY 2003-04 indicate nearly two-thirds of North Carolina's $1.8 billion in Medicaid expenditures for the elderly went directly for long-term care. While it is difficult to quantify the effect of the state tax credit on Medicaid expenses now and in the next few years, there is a general belief in the value of

incentives to signal the importance of personal planning for the cost of long-term care. In a study conducted by Dr. Marc A. Cohen and released by the Health Insurance Association of American in September of 2002, it is reported that long-term care insurance reduces state and federal Medicaid expenditures and federal Medicare home health expenditures. Medicaid savings are projected to total about $5,000 per policy holder and Medicare savings are estimated to exceed $1,600 per policyholder.

The federal government allows a tax deduction if medical and long-term care expenses exceed 7.5 % of income. The state tax credit could not be claimed if the long-term care insurance premiums were claimed on the federal return.

Impact of Credit on Tax Revenue: The number of claims filed and the amount of the credit claimed from 1999 to 2002 is as follows:

	# Claims	Credit Amount
Tax year 1999	21,029	$4,181,454
Tax year 2000	29,206	$5,974,615
Tax year 2001	51,959	$10,367,883
Tax year 2002	27,516	$5,652,648

For tax year 2001, the Department of Revenue found that many of the persons seeking the credit claimed it incorrectly. They attributed the high error rate to two possible factors: the complicated nature of the credit and confusion of the credit with a repealed child health insurance credit. Following efforts by the Department of Revenue to educate consumers and tax preparers as well as to clarify instructions about eligibility for the credit, the error rate was down considerably for the 2002 tax year.

Support of State Tax Credit: Reinstituting the tax credit is supported by numerous state level groups and associations including the Governor's Advisory Council on Aging, the N.C. Coalition on Aging, and the N.C. Senior Tar Heel Legislature. The Study Commission on Aging is also recommending that the tax credit be reenacted.

House Bills Introduced in 2006 Legislative Session: House Bills 84, 118, 148, 2008, and 2095 would reenact the income tax credit for long-term care insurance. House Bill 396 would reenact and revise the income tax credit for long-term care insurance premiums so the credit would be increased to 25% of the premium costs, not to exceed $500.

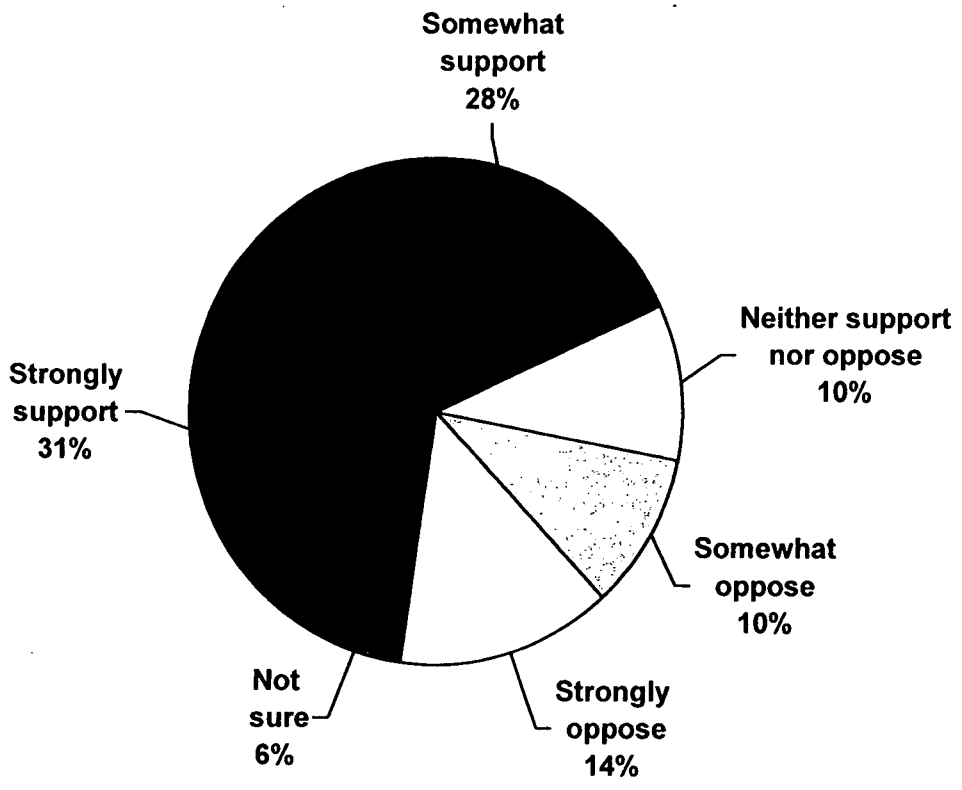
For additional information, contact: Mary Bethel – 508-0297, 749-6188, MBethel@aarp.org
Bill Wilson – 508-0299, 271-2838, BiWilson@aarp.org

Health Care Issues

Nearly six in ten Tar Heels age 50 and over support providing a state tax credit for those who purchase long-term care insurance.

In 1998, the North Carolina legislature passed a tax credit for residents who purchased insurance to help pay for their long-term care. The tax credit was 15 percent of the cost of the insurance premium, but could not exceed $350. In 2004, the tax credit expired and is no longer available. Nearly six in ten (59%) residents age 50 and older support providing a tax credit for those who purchase long-term care insurance. They support such a tax credit even if it means that other taxes would have to increase or services would have to be cut.

Support for Providing a Tax Credit for Those Purchasing Long-Term Care Insurance, Even if Taxes Increase or Services Would be Cut (N =801)



Almost four in ten (38%) North Carolinians 50 and over say they would be more likely to vote for a candidate for state office who supported reinstating the tax credit for those who purchased long-term care insurance. Eleven percent would be less likely to vote for such a candidate, while 46 percent say the candidate's stance on this issue would not make a difference to their voting behavior.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 1778

Committee Substitute Favorable 7/13/06

Short Title: Risk-Based Environmental Remediation/Fund. (Public)

Sponsors:

Referred to:

May 12, 2005

A BILL TO BE ENTITLED

AN ACT TO EXPAND AND MAKE CONSISTENT THE CIRCUMSTANCES UNDER WHICH THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES SHALL ALLOW FOR RISK-BASED REMEDIAL ACTIONS.

Whereas, the General Assembly finds that there are contaminated areas in North Carolina, including land and other property, surface water, and groundwater, that are adversely affected by environmental contamination due to the presence of drilling waste; hazardous and toxic materials, substances, and wastes; solid waste; oil; and other wastes, contaminants, and regulated substances; and

Whereas, the General Assembly finds that the presence of environmental contamination on these areas creates both potential and actual harm to public health, safety, and welfare, and to the environment; and

Whereas, the General Assembly finds that this potential and actual harm results in substantial economic losses, including reduced property values and tax revenues; decreased ability to develop and expand the beneficial use of these areas; and other opportunity costs because of the uncertainties and concerns that result from the environmental contamination of these areas; and

Whereas, the General Assembly finds that it is in the public interest that contaminated areas are cleaned up or managed in a manner that protects public health, safety, welfare and the environment and protects groundwater that is a current or probable future water supply; and

Whereas, the General Assembly finds that North Carolina has numerous and varied State-managed remediation programs to address environmental contamination, including the Inactive Hazardous Sites Response Act of 1987, the hazardous waste management program administered by the State pursuant to the federal Resource Conservation and Recovery Act of 1976, the Leaking Petroleum Underground Storage Tank Cleanup Act of 1988, the Brownfields Property Reuse Act of 1997, the Dry-Cleaning Solvent Cleanup Act of 1997, the federal Superfund program administered in part by the State pursuant to the Comprehensive Environmental

Response, Compensation, and Liability Act of 1980 and the Superfund Amendments and Reauthorization Act of 1986, and the groundwater protection rules adopted by the Environmental Management Commission; and

Whereas, the General Assembly finds that these remediation programs utilize varying standards, levels, protocols, means, methods, techniques, interpretations, and other requirements and apply various federal regulations and State rules applicable to testing, monitoring, assessing, prioritizing, characterizing, and cleanup or remediation of contaminated areas; and

Whereas, the General Assembly finds that the expenditure of public and private resources on unnecessary remediation could better be channeled to other purposes, including new development, renovation and repair, research and development, training and education, and other activities that maintain and enhance North Carolina's competitive position in the world and the excellent quality of life enjoyed by the citizens of North Carolina; and

Whereas, the General Assembly finds that public health, safety, and welfare and the environment can be protected by implementing a risk-based remediation process that requires that contaminated areas be cleaned up to a level that is sufficient to ensure protection of public health, safety, and welfare and the environment without excessive expenditure of public or private resources; and

Whereas, the General Assembly finds that North Carolina's groundwater is a valuable public and private resource, serving as the drinking water source for one-half of the State's population and also as a water supply for industrial and commercial uses; and

Whereas, the General Assembly finds that maintenance of North Carolina's surface water and groundwater resources will become increasingly important to the continued economic vitality of the State in the future; and

Whereas, the General Assembly finds that use of site-specific remediation standards based on an objective, scientific, and uniform approach to the evaluation of the risk posed by each contaminated area can be protective of public health, safety, and welfare and the environment; and

Whereas, the General Assembly finds that use of site-specific remediation standards in appropriate circumstances may encourage cleanup of contaminated sites; and

Whereas, the General Assembly intends that the levels of remediation that are established for each contaminated area are to be applicable or relevant and appropriate standards under federal remediation programs; and

Whereas, the General Assembly intends that the protections afforded to public health, safety, and welfare and to the environment by existing environmental, health, and safety standards that apply to ongoing activities not be diminished in any way, in order that those standards will continue to protect against the discharge or release of contaminants to the environment that would result in additional contaminated areas; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Article 7 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

Part 1A. Risk-Based Environmental Remediation.

"**§ 143B-279.15. Definitions.**

As used in this Part:

(1) 'Background standard' means the naturally occurring concentration of a substance in the absence of the release of a contaminant at the site.

(2) 'Contaminant' means any substance regulated under any program listed in subdivisions (1) through (6) of G.S. 143B-279.17.

(3) 'Department' means the Department of Environment and Natural Resources.

(4) 'Groundwater contamination' means a contaminant released to the environment that has resulted, or has the potential to result, in an increase in the concentration of the contaminant or contaminants in the groundwater in excess of unrestricted use standards.

(5) 'Institutional controls' means nonengineered measures, including land-use restrictions, used to prevent unsafe exposure to contamination.

(6) 'Remedial action plan' means a plan for eliminating or reducing contamination based on rules established pursuant to this Part.

(7) 'Remediation' means all actions that are necessary or appropriate to clean up, mitigate, correct, abate, minimize, eliminate, control, or prevent the spreading, migration, leaking, leaching, volatilization, spilling, transport, or further release of a contaminant into the environment in order to protect public health, safety, or welfare or the environment.

(8) 'Responsible person' means a person who is or may be liable for remediation under any program listed in subdivisions (1) through (6) of G.S. 143B-279.17.

(9) 'Secretary' means the Secretary of Environment and Natural Resources.

(10) 'Systemic toxicant' means any substance that may enter the body and have a harmful effect, other than causing cancer.

(11) "Unrestricted use standards" means contaminant concentrations for each environmental medium that are acceptable for all uses, that are protective of public health, safety, and welfare and the environment, and that comply with generally applicable standards, guidance, or methods established by statute or adopted, published, or implemented by the Environmental Management Commission, the Commission for Health Services, or the Department.

"**§ 143B-279.16. Purpose**

It is the purpose of this Part to allow the Department to approve the remediation of contaminated property based on site-specific remediation standards in circumstances where site-specific remediation standards are adequate to protect public health, safety,

and welfare and the environment and are consistent with protection of current and anticipated future use of groundwater and surface water affected or potentially affected by the contamination.

"**§ 143B-279.17. Applicability.**

This Part applies to remediation under the following programs to the extent that the programs address the contaminants and the contaminated environmental media and to the extent this Part does not conflict with federal authority:

(1) The Inactive Hazardous Sites Response Act of 1987, G.S. 130A-310, et seq.

(2) The hazardous waste management program administered by the State pursuant to the federal Resource Conservation and Recovery Act of 1976, Pub. L. 94-580, 90 Stat. 2795, 42 U.S.C. § 6901, et seq., as amended.

(3) Solid waste management facilities regulated under Article 9 of Chapter 130A of the General Statutes.

(4) The federal Superfund program administered in part by the State pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. 96-510, 94 Stat. 2767, 42 U.S.C. § 9601, et seq., as amended, the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499, 100 Stat. 1613, as amended, and G.S. 130A-310.20, et seq.

(5) The groundwater protection corrective action requirements adopted by the Environmental Management Commission pursuant to Article 21 of Chapter 143 of the General Statutes.

(6) Oil Pollution and Hazardous Substances Control Act of 1978, Parts 1 and 2 of Article 21A of Chapter 143 of the General Statutes."

"**§ 143B-279.18. Remediation standards.**

(a) Remediation Standards. – When conducting remediation activities pursuant to this Part, any person who proposes or is required to respond to the release of a contaminant at a site shall attain compliance with one of the following standards:

(1) The unrestricted use standard applicable to each affected media.

(2) The background standard for any media in which naturally occurring concentrations of a substance exceeds the unrestricted use standards.

(3) A site-specific remediation standard developed in accordance with subsection (b) of this section that is approved by the Department.

(4) Any combination of remediation standards described in this subsection that is approved by the Department.

(b) Site-Specific Remediation Standard. – Site-specific remediation standards shall be developed for each medium in accordance with the requirements of this subsection to achieve remediation that eliminates or reduces to protective levels any substantial present or probable future risk to human health, including sensitive subgroups, and the environment based upon the present or currently planned future use of the property comprising the site.

(1) The site-specific remediation standard for ambient air shall be the air quality standards adopted by the Environmental Management Commission.

(2) The site-specific remediation standard for surface waters shall be the water quality standards adopted by the Environmental Management Commission.

(3) The current and probable future use of groundwater shall be identified and protected. Site-specific sources of contaminants and potential receptors shall be identified. Potential receptors must be protected, controlled, or eliminated whether the receptors are located on or off the property where the source of contamination is located. Natural environmental conditions affecting the fate and transport of contaminants, such as natural attenuation, shall be determined by appropriate scientific methods.

(4) Soil shall be remediated to levels that no longer constitute a continuing source of groundwater contamination in excess of the site-specific groundwater remediation standards approved under this Part.

(5) Soil shall be remediated to unrestricted use standards on residential property except:

a. For mixed-use developments where the ground level uses are nonresidential and where all potential exposure to soil has been eliminated, the Department may allow soil to remain on the site in excess of unrestricted use standards.

b. If soil remediation is impracticable because of the presence of preexisting structures, all areas of the real property at which a person may come into contact with soil shall be remediated to unrestricted use standards, and, on all other areas of the real property, engineering and institutional controls that are sufficient to protect public health, safety, and welfare and the environment shall be implemented and maintained.

(6) The potential for human inhalation of contaminants from the outdoor air and other site-specific air exposure pathways shall be considered if applicable.

(7) The site-specific remediation standard shall protect against human exposure to contamination through the consumption of contaminated fish or wildlife and through the ingestion of contaminants in surface water or groundwater supplies.

(8) For known or suspected carcinogens, site-specific remediation standards shall be established at exposures that represent an excess lifetime cancer risk of one in 1,000,000. The site-specific remediation standard may depart from the one in 1,000,000 risk level based on the criteria set out in 40 Code of Federal Regulations § 300.430(e)(9) (1 July 2003 Edition). The cumulative excess lifetime cancer risk to an

exposed individual shall not be greater than one in 10,000 based on the sum of carcinogenic risk posed by each contaminant present.

(9) For systemic toxicants, site-specific remediation standards shall represent levels to which the human population, including sensitive subgroups, may be exposed without any adverse health effect during a lifetime or part of a lifetime. Site-specific remediation standards for systemic toxicants shall incorporate an adequate margin of safety and shall take into account cases where two or more systemic toxicants affect the same organ or organ system.

(10) The site-specific remediation standards for each medium shall be adequate to prevent adverse effects to the environment.

"**§ 143B-279.19. Remedial action plans.**

(a) A person who proposes to conduct remediation pursuant to this Part shall develop and submit a proposed remedial action plan to the Department. A remedial action plan shall provide for the protection of public health, safety, and welfare and the environment. A proposed remedial action plan shall include a legal description of the location of the site, a map showing the location of the site, a description of the contaminants involved and their concentration in the media of the site, a description of the intended future use of the site, and any proposed investigation and remediation.

(b) A remedial action plan shall:

(1) Identify immediate actions required to remove the source of contamination and to address any imminent threat to public health, safety, or welfare or the environment.

(2) Assess all contaminated areas, including types and levels of contamination; the horizontal and vertical extent of contamination; and the risk to public health, safety, and welfare and to the environment posed by the contamination.

(3) Address contamination that moves from one medium to another in order to prevent a violation of the remediation standards established under G.S. 143B-279.18. A more stringent remediation standard may be required for a particular medium to control impact on other media.

(4) Identify the current and anticipated future uses of property comprising the contaminated area and address any concerns raised in public comment on the proposed remedial action plan as to the proposed future uses of the property.

(5) Identify the current and anticipated future uses of groundwater in the contaminated area and address any concerns raised in public comment on the proposed remedial action plan as to the future uses of groundwater.

(6) Determine the appropriate method of remediation to achieve an acceptable level or range of levels of risk.

(7) Specify any measures that may be necessary to prevent adverse effects to the environment that may occur at levels of contamination that are lower than the standard necessary to protect human health.

(8) Specify any measures that may be necessary to prevent any discharge into surface waters or air emission in violation of applicable surface water quality and air quality standards adopted by the Environmental Management Commission during implementation of the remedial action plan.

(9) Provide for attainment and maintenance of the remediation standards established under G.S. 143B-279.18.

(10) Provide for methods and procedures to verify that the quantity, concentration, range, or other measure of each contaminant remaining at the contaminated area at the conclusion of active remediation meets the remediation standards established for the site, that an acceptable level of risk has been achieved, and that no further remediation is required.

(11) Provide an appropriate level of oversight for implementation of the proposed remedial action plan based on the nature and complexity of the site and the proposed remedial actions.

(12) Provide for the imposition and recordation of land use restrictions as provided in G.S. 143B-279.9, 143B-279.11, 130A-310.3(f), 130A-310.8, 130A-310.35, 143-215.84(f), and 143-215.85(a) if the remedial action plan allows contamination in excess of the greater of unrestricted use standards or background standards to remain on any real property or in groundwater that underlies any real property.

(13) Define the circumstances under which no further remediation is required.

(c) A remedial action plan shall also include an analysis of each of the following factors:

(1) Long-term risks and effectiveness of the proposed remediation including an evaluation of:

a. The magnitude of risks remaining after completion of the remediation.

b. The type, degree, frequency, and duration of any post-remediation activity that may be required, including but not limited to, operation and maintenance, monitoring, inspection, reports, and other activities necessary to protect public health, safety, and welfare and the environment.

c. Potential for exposure of human and environmental receptors to contaminants remaining at the site.

d. Long-term reliability of any engineering and voluntary institutional controls, including repair, maintenance, or replacement of components.

f. Time required to achieve remediation standards.

(2) Toxicity, mobility, or volume of contaminants, including the amount of contaminants that will be removed, contained, treated, or destroyed; the degree of expected reduction in toxicity, mobility, or volume; and

the type, quantity, toxicity, and mobility of contaminants that will remain after implementation of the remedial action plan.

(3) Short-term risks and effectiveness of the remediation, including the short-term risks that may be posed to the community, workers, or the environment during implementation of the remedial action plan, and the effectiveness and reliability of protective measures to address short-term risks.

(4) The ease or difficulty of implementing the remedial action plan, including commercially available remedial measures, expected operational reliability, available capacity and location of needed treatment, storage and disposal services for wastes, time to initiate remediation, and approvals necessary to implement the remediation.

"**§ 143B-279.20. Notice of intent to remediate.**

At the time that a person who proposes a remedial action plan submits the plan to the Department, the person shall send a notice of intent to remediate to all local governments having taxing or land-use jurisdiction over the site. The notice shall include all of the information required in G.S. 143B-279.19(a) and provide for a public comment period of at least 30 days during which the municipality or county or any citizen may submit comments to the applicant and to the Department. The Department may conduct a public hearing on the proposed remedial action plan if there is significant public interest. The person shall also publish a summary of the notice at least once in a newspaper of general circulation in the county or counties where the site is located. The person shall consider any information provided pertaining to current and future uses of groundwater in the area of the site and any concerns expressed with respect to proposed future uses of the site following remediation. The person shall provide a response to any information or comments on the remediation standards or the proposed remedial action plan that are received during the comment period. The person may modify the plan based on information or comments received during the comment period.

"**§ 143B-279.21. Review and approval of proposed remedial action plans by the Department.**

(a) The Department shall review and approve a proposed remedial action plan consistent with the remediation standards set out in G.S. 143B-279.18 and the procedures set out in this section. In its review of a proposed remedial action plan, the Department shall:

(1) Determine whether the proposed remedial action plan meets the requirements of G.S. 143B-279.19.

(2) Determine whether a risk-based approach to remediation is appropriate for a particular contaminated area. In making this determination the Department shall consider proximity of the contamination to water supply wells or other receptors; current and anticipated future reliance on the groundwater as a water supply; current and anticipated future land use; environmental impacts; and the feasibility of remediation to unrestricted use standards.

(3) Establish the acceptable level or range of levels of risk to public health, safety, and welfare and to the environment.

(4) Establish, for each contaminant, the maximum allowable quantity, concentration, range, or other measures of contamination that will remain at the contaminated area at the conclusion of active remediation.

(5) Consider the technical performance, effectiveness, and reliability of the proposed remedial action plan in attaining and maintaining compliance with applicable remediation standards.

(6) Consider the ability of the person who proposes to remediate the site to implement the proposed remedial action plan within a reasonable time and without jeopardizing public health, safety, or welfare or the environment.

(7) Determine whether the proposed remedial action plan adequately provides for the imposition and maintenance of engineering and institutional controls and for sampling, monitoring, and reporting requirements necessary to protect public health, safety, and welfare and the environment.

(8) Approve the circumstances under which no further remediation is required.

(b) The person who proposes a remedial action plan shall certify to the Department that a notice of intent to remediate has been provided as required by G.S. 143B-279.20.

(c) The person who proposes a remedial action plan has the burden of demonstrating that the remedial action plan is protective of public health, safety, and welfare and the environment and complies with the requirements of this Part. The Department may require a person who proposes a remedial action plan to supply any additional information necessary for the Department to approve or disapprove the plan.

(d) In making a determination on a proposed remedial action plan, the Department shall consider the information provided by the person who proposes the remedial action plan as well as information provided by local governments pursuant to G.S. 143B-279.20. The Department shall disapprove a proposed remedial action plan unless the Department finds that the plan is protective of public health, safety, and welfare and the environment and complies with the requirements of this Part. The Department shall approve or disapprove a proposed remedial action plan within 90 days after a complete plan has been submitted for review. If the Department disapproves a proposed remedial action plan, the person who submitted the plan may seek review as provided in Article 3 of Chapter 150B of the General Statutes. If the Department fails to approve or disapprove a proposed remedial action plan within 90 days after a complete plan has been submitted, the person who submitted the plan may treat the plan as having been disapproved.

"**§ 143B-279.22. Attainment of the remediation standard.**

(a) Compliance with the approved remediation standards is attained for a site or portion of a site when a remedial action plan approved by the Department has been

implemented and applicable soil, groundwater, surface water and air emission standards have been attained. The remediation standards may be attained through a combination of remediation activities that can include treatment, removal, engineering or institutional controls, except that the responsible person may not demonstrate attainment of an unrestricted use standard or a background standard through the use of institutional controls alone. When the remedial action plan has been fully implemented, the responsible person shall submit a final report to the Department, with notice to the local government with taxing and land-use jurisdiction, that demonstrates that the remedial action plan has been fully implemented and that the remediation standards have been attained. The final report shall be accompanied by a request that the Department issue a release from further remediation.

(b) The responsible person has the burden of demonstrating that the remedial action plan has been fully implemented and that the remediation standards have been attained in compliance with the requirements of this Part. The Department may require a person who implements the remedial action plan to supply any additional information necessary for the Department to determine whether the remediation standards have been attained.

(c) The Department shall review the final report, and, upon determining that the responsible person has completed remediation to the approved remediation standard, the Department shall issue a release from further remediation at the site. Once the Department has issued a release, the Department may require additional remedial action by the responsible party only upon finding that:

(1) Monitoring, testing, or analysis of the property subsequent to the issuance of the release letter indicates that the remediation standards and objectives were not achieved or are not being maintained.

(2) One or more of the conditions, restrictions, or limitations imposed on the property as part of the remediation have been violated.

(3) Site monitoring or operation and maintenance activities that are required as part of the remedial action plan or written determination of completion for the property are not adequately funded or are not adequately implemented.

(4) A hazardous substance release is discovered at the property that was not the subject of the site investigation and remediation for which the release letter was issued.

(5) A material change in the facts known to the Department at the time the written determination of completion was issued, or new facts, cause the Department to find that further assessment or remediation is necessary to prevent a significant risk to human health and safety or to the environment.

(6) The release letter was based on fraud, misrepresentation, or intentional nondisclosure of information by the responsible person.

(d) The Department shall issue a final decision on a request for release from further remediation within 90 days after receipt of a complete final report. Failure of the Department to issue a final decision on release from further remediation within 90 days

after receipt of a complete final report may be treated as a denial of the request for release from further remediation. The responsible person may seek review of a denial of a request for a release from further remediation as provided in Article 3 of Chapter 150B of the General Statutes.

(e) Once the Department issues a release from further remediation at the site, any person that changes the use of the property causing the level of risk to increase beyond the acceptable risk range shall be required by the Department to undertake additional remediation measures.

"**§ 143B-279.23. Compliance with other laws.**

This Part shall not be construed to limit the authority of the Department to require investigation, initial response, or remediation of environmental contamination under any other provision of State or federal law or to direct actions necessary to address an imminent threat to public health, safety, or welfare or the environment. This Part shall not be construed or implemented to alter the requirements of programs, including permitting programs that regulate the handling of hazardous substances, or otherwise impose requirements intended to prevent or mitigate the release or discharge of contaminants to the environment.

"**§ 143B-279.24. Adoption of rules.**

The Secretary may adopt rules to implement this Part. This Part shall not be deemed to modify the bases upon which the unrestricted use standards are adopted by the Environmental Management Commission pursuant to Article 21 of Chapter 143 of the General Statutes.

"**§ 143B-279.25. Risk-based remediation fees.**

(a) A person who undertakes remediation of environmental contamination under site-specific remediation standards as provided in G.S. 143B-279.18 shall pay a fee to the Risk-Based Remediation Fund in an amount equal to three thousand dollars ($3,000) for each acre or portion of an acre of contamination; however, no person shall be required to pay more than seventy-five thousand dollars ($75,000) to the Risk-Based Remediation Fund for any individual site, regardless of its size. This onetime fee shall be payable at the time the person undertaking remediation submits the remedial action plan to the Department.

(b) The Department shall not allow risk-based remediation under rules adopted pursuant to this Part for environmental contamination that occurs after 1 July 2006 unless the petitioner pays a fee of five thousand dollars ($5,000) to the Risk-Based Remediation Fund.

"**§ 143B-279.26. Risk-Based Remediation Fund.**

(a) There is established under the control and direction of the Department of Environment and Natural Resources the Risk-Based Remediation Fund. The Risk-Based Remediation Fund shall be a nonreverting fund consisting of fee payments made to the Department pursuant to G.S. 143B-279.25, monies appropriated for such purpose by the General Assembly, investment interest credited to the Fund, and other monies paid to or recovered on behalf of the Fund.

(b) The Risk-Based Remediation Fund may be used to pay the costs of:

(1) Remediation of environmental contamination at sites that have previously undergone a risk-based remediation but are later found to present an imminent hazard to public health, safety, or welfare or the environment, where a responsible person cannot be identified or located or where the responsible person is unable to pay the costs of remediation, and where there is no other dedicated source of State or federal funds to undertake the remediation.

(2) Establishing alternative drinking water supplies for third parties, affected by environmental contamination at sites that are remediated under this Part, where a responsible person cannot be identified or located or where the responsible person is unable to pay the costs of establishing alternative drinking water supplies, and where there is no other dedicated source of State or federal funds to undertake the establishment of alternative drinking water supplies.

(3) Establishing, administering, and maintaining a geographic information system capable of mapping the land and water resources of the State that are remediated under risk-based remediation.

(4) Administrative and staffing support necessary to implement this Part.

"**§ 143B-279.27. Construction of Part.**

No provision of this Part shall be construed to supersede or otherwise affect or prevent the enforcement of any land-use or development regulation or ordinance adopted by a city pursuant to Article 19 of Chapter 160A of the General Statutes or by a county pursuant to Article 18 of Chapter 153A of the General Statutes. The use of the site and any land-use restrictions imposed as part of a remedial action plan shall comply with local land-use and development controls adopted by a city pursuant to Article 19 of Chapter 160A of the General Statutes or by a county pursuant to Article 18 of Chapter 153A of the General Statutes."

SECTION 2. The Secretary of Environment and Natural Resources shall use all reasonable efforts to obtain a written agreement from the United States Environmental Protection Agency that Part 1A of Article 7 of Chapter 143B of the General Statutes, as enacted by Section 1 of this act, and the rules adopted by the Secretary pursuant to G.S. 143B-279.25 are consistent with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. 96-510, 94 Stat. 2767, 42 U.S.C. § 9601, et seq., as amended, and the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499, 100 Stat. 1613, as amended.

SECTION 3. On or before 1 October 2008, the Department of Environment and Natural Resources shall report to the Environmental Review Commission as to the steps the Secretary of Environment and Natural Resources and the Department have taken to implement this act. The report shall include information on the adoption of rules to implement Part 1A of Article 7 of Chapter 143B of the General Statutes, as enacted by Section 1 of this act, the number of contaminated areas that have been proposed for remediation under the rules, the number of contaminated areas that are undergoing active remediation under the rules, the number of contaminated areas at which remediation under the rules has been completed, the number of contaminated

areas that are known or believed to be appropriate for remediation under the rules, and the number of contaminated areas for which the Department has determined that a risk-based approach to remediation under the rules is not appropriate and the reasons for each determination. On or before 1 October 2009, the Department shall undertake an examination of the risk-based remediation procedures currently in place for remediation programs administered by the Department that are not included in G.S. 143B-279.17, as enacted by Section 1 of this act, and report to the Environmental Review Commission on what actions would be necessary to make remediation under those programs consistent with Part 1A of Article 7 of Chapter 143B of the General Statutes, as enacted by Section 1 of this act. Those programs include the following:

(1) The Leaking Petroleum Underground Storage Tank Cleanup Act of 1988, G.S. 143-215.94A, et seq.

(2) The Brownfields Property Reuse Act of 1997, G.S. 130A-310.30, et seq.

(3) The Dry-Cleaning Solvent Cleanup Act of 1997, G.S. 143-215.104A, et seq.

SECTION 4. This act is effective when it becomes law.

HOUSE BILL 1778:
Risk-Based Environmental Remediation/Fund

BILL ANALYSIS

Committee:	House Finance	**Date:**	July 17, 2006
Introduced by:	Reps. Gibson, LaRoque	**Summary by:**	Jeff Hudson
Version:	Second Edition		Staff Attorney

SUMMARY: House Bill 1778 would establish a program to authorize the Department of Environment and Natural Resources to approve the cleanup of contaminated property based on site-specific, risk-based standards, effective when the act becomes law.

BILL ANALYSIS:

SECTION 1 would establish a new Part in Article 7 of Chapter 143B of the General Statutes, Part 1A (Risk-Based Environmental Remediation). The individual statutes in this Part would provide the following:

G.S. 143B-279. 15. Definitions.

G.S. 143B-279.16. Purpose.

G.S. 143B-279.17. Applicability.

Under the Risk-Based Environmental Remediation Program (Program), site-specific, risk-based cleanups would be available for contaminated property covered by any of the following existing State environmental programs: the Inactive Hazardous Sites Program; the hazardous waste management program; the solid waste management program; the State administered part of the Superfund program; the Environmental Management Commission's groundwater protection program; and the Oil Pollution and Hazardous Substances Control Program.

G.S. 143B-279.18. Remediation standards.

A contaminated property may be cleaned up to site-specific standards that eliminate or reduce to protective levels any substantial present or probable future risk to human health, including sensitive subgroups, and the environment based on the present or currently planned future use of the property.

G.S. 143B-279.19. Remedial action plans.

A person who proposes to conduct a cleanup under the Program must develop and submit a proposed remedial action plan to the Department of Environment and Natural Resources (Department). A remedial action plan must provide for the protection of public health, safety, and welfare and the environment and must include a legal description of the location of the property, a map showing the location, a description of the contaminants involved and their concentrations, a description of the intended future use of the property, and any proposed investigation and remediation.

G.S. 143B-279.20. Notice of intent to remediate.

When a person submits a proposed remedial action plan to the Department, the person must also send a notice of intent to cleanup the property to all local governments having taxing or land use jurisdiction over the property. The notice must provide for a public comment period of at least 30 days during which the local governments and citizens may submit comments to the person and the Department. The person must also publish a summary of the notice in a newspaper of general circulation in the county or

counties where the property is located. The person must consider and respond to any information or comments received on the remediation standards or the proposed remedial action plan.

G.S. 143B-279.21. Review and approval of proposed remedial action plans by the Department.

The Department must disapprove a proposed remedial action plan unless the Department finds that the plan is protective of public health, safety, and welfare and the environment. The person proposing the remedial action plan has the burden of demonstrating that the plan is protective. The Department must consider information provided by the person proposing the plan as well as information provided by local governments. The Department has 90 days within which to approve or disapprove a proposed plan.

G.S. 143B-279.22. Attainment of the remediation standard.

When a remedial action plan has been fully implemented, the responsible person will submit a final report to the Department that demonstrates that the plan has been fully implemented and that the remediation standards have been attained. The Department will review the final report and if the Department determines that the responsible person has cleaned the property up to the approved remediation standards the Department will issue a release from further cleanup of the property. The Department may require additional cleanup after issuing a release under certain circumstances.

G.S. 143B-279.23. Compliance with other laws.

This Part will not limit the authority of the Department to require investigation, initial response, or cleanup of contamination under any other provision of state or federal law or to direct actions necessary to address an imminent threat to public health, safety, or welfare or the environment.

G.S. 143B-279.24. Adoption of rules.

The Secretary of Environment and Natural Resources may adopt rules to implement this Part.

G.S. 143B-279.25. Risk-based remediation fees.

A person who undertakes a site-specific, risk-based cleanup shall pay a fee of $3,000 for each acre up to a maximum of $75,000. The Department will not allow a site-specific, risk-based cleanup for environmental contamination that occurs after July 1, 2006 unless the person pays a $5,000 fee in addition to the fees above.

G.S. 143B-279.26. Risk-Based Remediation Fund.

Risk-based remediation fees will be paid into the Risk-Based Remediation Fund, which will be under the control and direction of the Department. Funds from the Risk-Based Remediation Fund may be used for cleanup of failed site-specific, risk-based cleanups; to provide drinking water for third parties affected by environmental contamination from a property cleaned up under this Part, to map land and water resources cleaned up under this Part, and to implement this Part.

G.S. 143B-279.27. Construction of Part.

The Part may not be construed to affect local government land-use or development regulations or ordinance.

SECTION 2 directs the Secretary of Environment and Natural Resources to use all reasonable efforts to obtain an agreement from the United States Environmental Protection Agency that the Program is consistent with federal environmental law.

SECTION 3 directs the Department to report to the Environmental Review Commission on the implementation and possible expansion of the program.